

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 \*).

Proposal to amend the Exchange Pricing Schedule at Section II, entitled Multiply Listed Options Fees, to amend pricing related to options overlying NDX and MNX.

**Contact Information**

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

First Name \* Angela      Last Name \* Dunn  
 Title \* Principal Associate General Counsel  
 E-mail \* Angela.Dunn@nasdaq.com  
 Telephone \* (215) 496-5692      Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)  
 Executive Vice President and General Counsel

Date 03/09/2017  
 By Edward S. Knight  
 (Name \*)

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**

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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 (“Phlx” or “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> proposes to amend the Exchange’s Pricing Schedule at Section II, entitled “Multiply Listed Options Fees,”<sup>3</sup> to amend pricing related to options overlying NDX<sup>4</sup> and MNX.<sup>5</sup>

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of the applicable portion of the Pricing Schedule is attached hereto as 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> These fees include options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

<sup>4</sup> NDX represents options on the Nasdaq 100 Index traded under the symbol NDX (“NDX”).

<sup>5</sup> MNX represents options on one-tenth the value of the Nasdaq 100 Index traded under the symbol MNX (“MNX”).

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 Exchange proposes to amend pricing related to NDX and MNX by adopting Options Transaction Charges for NDX and MNX and also eliminating the Marketing Fee for NDX and MNX.<sup>6</sup> The Exchange notes that both NDX and MNX are transitioning to be exclusively listed on the Exchange and its affiliated markets in 2017.<sup>7</sup>

Today, the Exchange assesses transactions in NDX and MNX the following Options Transaction Charges for non-Penny Pilot Options: a \$0.75 per contract for electronic Professional<sup>8</sup> transactions and \$0.25 per contract for floor Professional transactions; \$0.25 per contract for Specialist<sup>9</sup> and Market Maker<sup>10</sup> electronic

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<sup>6</sup> The Exchange initially filed the proposed pricing change on February 28, 2017 (SR-Phlx-2017-20). On March 8, 2017, the Exchange withdrew that filing and submitted this filing.

<sup>7</sup> The Exchange will exclusively list NDX and MNX in the near future upon expiration of open expiries in these products on other markets.

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

<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" 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

transactions and \$0.35 per contract for Specialist and Market Maker floor transactions; \$0.75 per contract for Broker-Dealer<sup>11</sup> electronic transactions and \$0.25 per contract for floor Broker-Dealer transactions; and \$0.75 per contract for Firm<sup>12</sup> electronic transactions and \$0.25 per contract for Firm floor transactions. Today, Customers<sup>13</sup> are not assessed a non-Penny Options Transaction Charge for NDX and MNX transactions. Also, today, all Non-Customers<sup>14</sup> are assessed a \$0.25 per contract surcharge in NDX and MNX.

The Exchange proposes to indicate that the Options Transaction charges for non-Penny Pilot Options will not apply to NDX and MNX transactions and instead adopt new pricing for NDX and MNX. The Exchange proposes to adopt the following Options Transaction Charges for NDX and MNX. Customers will continue to not be assessed an Options Transaction Charge for NDX and MNX. Professionals will be assessed the same

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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).

- <sup>11</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>12</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>13</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)).
- <sup>14</sup> The term “Non-Customer” applies to transactions for the accounts of Specialists, Market Makers, Firms, Professionals, Broker-Dealers and Joint Back Office.

\$0.75 per contract electronic Options Transaction Charge and an increased floor Options Transaction Charge of \$0.75 per contract<sup>15</sup> for NDX and MNX transactions. A Specialist and Market Maker will be assessed an increased electronic Options Transaction Charge of \$0.75 per contract<sup>16</sup> and the same \$0.35 per contract floor Options Transaction Charge for NDX and MNX transactions. A Broker-Dealer will be assessed the same \$0.75 per contract electronic Options Transaction Charge and an increased floor Options Transaction Charge of \$0.75 per contract<sup>17</sup> for NDX and MNX transactions. Finally, a Firm will be assessed the same \$0.75 per contract electronic Options Transaction Charge and an increased floor Options Transaction Charge of \$0.75 per contract<sup>18</sup> for NDX and MNX transactions. The Exchange will continue to assess Non-Customers an Options Surcharge for NDX and MNX of \$0.25 per contract as is the case today.<sup>19</sup> The Exchange is proposing to relocate the surcharge to a new note 5 within the Pricing Schedule instead of stating the pricing within the current table in Section II of the Pricing Schedule.

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<sup>15</sup> Today, a Professional is assessed a \$0.25 per contract floor Options Transaction Charge when transacting NDX and MNX.

<sup>16</sup> Today, a Specialist and Market Maker are assessed a \$0.25 per contract floor Options Transaction Charge when transacting NDX and MNX.

<sup>17</sup> Today, a Broker-Dealer is assessed a \$0.25 per contract floor Options Transaction Charge when transacting NDX and MNX.

<sup>18</sup> Today, a Firm is assessed a \$0.25 per contract floor Options Transaction Charge when transacting NDX and MNX.

<sup>19</sup> For clarity, the Exchange is amending the Customer charge from “N/A” to “\$0.00.” The Exchange believes that \$0.00 is more appropriate to reflect no charge.

The Exchange is also proposing to note that a Marketing Fee<sup>20</sup> will not be assessed on NDX and MNX. Today, for trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange, Specialists, Market Makers and Directed ROTs are assessed certain fees on those trades when the Specialist unit or Directed ROT elects to participate in the marketing program. Specifically, the Exchange assesses options that are trading in the Penny Pilot Program \$0.25 per contract and the remaining equity options are assessed \$0.70 per contract (including NDX and MNX). No Marketing Fees are assessed on trades that are not delivered electronically. No Marketing Fees are assessed on Professional orders. Marketing Fees are assessed on transactions resulting from Customer orders and are available to be disbursed by the Exchange according to the instructions of the Specialist units/Specialists or Directed ROTs to order flow providers who are members or member organizations, who submit, as agent, Customer orders to the Exchange or non-members or non-member organizations who submit, as agent, Customer orders to the Exchange through a member or member organization who is acting as agent for those Customer orders.

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<sup>20</sup> The Exchange's Marketing Fee helps its Specialists and Directed Registered Options Traders ("Directed ROTs") establish payment arrangements with an order flow provider in exchange for that order flow provider directing some or all of its order flow to that Specialist or Directed ROT. This program is funded through fees paid by Registered Options Traders ("ROTs"), Specialists and Directed ROTs and assessed on transactions resulting from customer orders. A Registered Option Trader 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. See Exchange Rule 1014 (b)(i) and (ii). A "Directed ROT" is an ROT who is a Directed Participant. The term "Directed Participant" applies to transactions for the account of a Specialist or ROT resulting from a customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>22</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>23</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>24</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>25</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’

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<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>23</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>24</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>25</sup> See NetCoalition, at 534 - 535.



play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>26</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>27</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.

The Exchange’s proposal to increase the floor Options Transaction Charges for Professionals, Firms and Broker-Dealers from \$0.25 to \$0.75 per contract for NDX and MNX is reasonable because the Exchange is assessing the same transaction fee whether the transaction occurred electronically or on the Exchange’s trading floor for these market participants. The Exchange’s increase for this proprietary product is competitive when compared with similar proprietary products.<sup>28</sup>

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<sup>26</sup> Id. at 537.

<sup>27</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>28</sup> See Chicago Board Options Exchange, Incorporated’s (“CBOE”) Fees Schedule. Russell 2000 Index (“RUT”) options transactions on CBOE, except customers, are assessed a \$0.45 per contract surcharge. CBOE assesses Professionals and Broker-Dealers a manual and AIM transaction fee of \$0.25 per contract and a non-AIM transaction fee of \$0.65 per contract. CBOE assesses Clearing Trade Permit Holders a transaction fee of \$0.22 per contract, subject to a sliding scale.

With respect to Specialists and Market Makers, the electronic Options Transaction Charge for NDX and MNX will be \$0.75 per contract, similar to other Non-Customer market participants. The Exchange believes that it is reasonable to assess Specialists and Market Makers the same electronic Options Transactions Charge in NDX and MNX as other market participants, except Customers. The Exchange's increase for this proprietary product is competitive when compared with similar proprietary products.<sup>29</sup> The Specialist and Market Maker floor Options Transaction Charge is not being amended and will remain at \$0.35 per contract. The Exchange will continue to assess a Specialist and Market Maker Options Transaction Charge of \$0.35 per contract for floor transactions in NDX and MNX because the Exchange desires to incentivize Specialists and Market Makers to continue to make markets in the NDX and MNX products on the trading floor.

The Exchange's proposal to increase the floor Options Transaction Charges for Professionals, Firms and Broker-Dealers from \$0.25 to \$0.75 per contract for NDX and MNX is equitable and not unfairly discriminatory because the Exchange will uniformly assess a \$0.75 per contract Options Transaction Charges for all market participants, except for Customers, Specialists and Market Makers transacting on the floor, regardless of whether the transaction is submitted electronically or on the floor. The Exchange believes that assessing Customers no transaction fee for NDX and MNX is equitable and not unfairly discriminatory because Customer orders bring valuable liquidity to the

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<sup>29</sup> See CBOE's Fees Schedule. RUT transactions on CBOE, except customers, are assessed a \$0.45 per contract surcharge. CBOE assesses market makers a manual and AIM transaction fee of \$0.25 per contract for RUT transactions. CBOE assesses market makers a non-AIM electronic transaction fee of \$0.65 per contract for RUT transactions.

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.

With respect to Specialists and Market Makers, the electronic Options Transaction Charge for NDX and MNX will be \$0.75 per contract, similar to other market participants. While this fee is increasing from \$0.25 to \$0.75 per contract, the Exchange, as proposed herein, will no longer assess a Marketing Fee for transactions in NDX and MNX, thereby effectively lowering the rate. For example, today, a Specialist or Market Maker transacting an electronic order in NDX or MNX will be assessed a \$0.25 per contract Options Transaction Charge in non-Penny Pilot Options, a \$0.25 per contract Options Surcharge and a \$0.70 per contract Marketing Fee for a total charge of \$1.20. With this proposal, a Specialist or Market Maker transacting an electronic order for NDX or MNX will be assessed a \$0.75 per contract Options Transaction Charge and a \$0.25 per contract Options Surcharge for a total charge of \$1.00. No Marketing Fee would be assessed. While all Non-Customer market participants would be assessed an electronic Options Transaction Charge of \$0.75 per contract for NDX or MNX, a Specialist or Market Maker will be assessed a lower total transaction charge as explained above, compared to today.

The Exchange believes that assessing Specialist and Market Makers a lower floor Options Transaction Charge of \$0.35 per contract for options overlying NDX and MNX and a higher electronic Options Transaction Charge of \$0.75 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.<sup>30</sup> 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. Further, Specialists and Market Makers have a time and place advantage on the trading floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a floor broker to represent their trading interest on the trading floor as compared to a Specialist or Market Maker that could directly transact such orders on the trading floor. For these reasons, the Exchange is encouraging Specialists and Market Makers to transact NDX and MNX on the trading floor and recognizing the obligations of these market participants as compared to other market participants.

The Exchange notes that the proposed rule changes are reasonable, equitable and not unfairly discriminatory as NDX and MNX transition to exclusively listed products. Similar to other proprietary products, the Exchange seeks to recoup the operational

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<sup>30</sup> See Phlx Rule 1014.

costs<sup>31</sup> for listing proprietary products. Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.<sup>32</sup> Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact options overlying NDX and MNX or separately execute options overlying PowerShares QQQ Trust (“QQQ”).<sup>33</sup> Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact NDX and MNX.<sup>34</sup> When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

The Exchange’s proposal to eliminate the Marketing Fee for NDX and MNX is reasonable because in light of the transition of NDX and MNX to exclusively listed products and new pricing, the Exchange is increasing the Specialist and Market Maker electronic Options Transaction Charges for options overlying NDX and MNX. By removing the Marketing Fee, Specialists and Market Makers will avoid an increase in costs.

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<sup>31</sup> By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a Multiply Listed Option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

<sup>32</sup> See pricing for RUT on CBOE’s Fees Schedule.

<sup>33</sup> QQQ is an exchange-traded fund based on the Nasdaq-100 Index®.

<sup>34</sup> By comparison, a market participant may trade options overlying RUT or separately the market participant has the choice of trading iShares Russell 2000 Index Fund (“IWM”) Exchange-Traded Fund Shares options, which are also multiply listed.

The Exchange's proposal to eliminate the Marketing Fee for NDX and MNX is equitable and not unfairly discriminatory because in light of the transition of NDX and MNX to exclusively listed products and new pricing, the elimination of this fee will cause Specialists and Market Makers to continue to be assessed a lower total charge for the transaction as compared to other market participants.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory 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 change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets or will impose any inter-market burden on competition for the reasons stated above.

The Exchange's proposal to increase the floor Options Transaction Charges for Professionals, Firms and Broker-Dealers from \$0.25 to \$0.75 per contract for NDX and MNX does not impose an undue burden on intra-market competition because the Exchange will uniformly assess a \$0.75 per contract Options Transaction Charges for all market participants, except for Customers and Specialists and Markets transacting on the floor, regardless of whether the transaction is submitted electronically or on the floor. The Exchange believes that assessing Customers no transaction fee for NDX and MNX 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 attract 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. It is also important to note that despite the fee increases with respect to NDX, members may continue to separately execute options overlying PowerShares QQQ Trust ("QQQ").<sup>35</sup>

With respect to Specialists and Market Makers, increasing the electronic Options Transaction Charge for NDX and MNX from \$0.25 to \$0.75 per contract, the Exchange, as proposed herein, does not impose an undue burden on intra-market competition as the Exchange will no longer assess a Marketing Fee for on NDX and MNX, thereby effectively lowering the rate. The Exchange believes that assessing Specialists and Market Makers a lower floor Options Transaction Charge of \$0.35 per contract for NDX

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<sup>35</sup> By comparison, a market participant may trade options overlying RUT or separately the market participant has the choice of trading iShares Russell 2000 Index Fund ("IWM") Exchange-Traded Fund Shares options, which are also multiply listed.

and MNX and a higher electronic Options Transaction Charge of \$0.75 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.<sup>36</sup> 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. Further, Specialists and Market Makers have a time and place advantage on the trading floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a floor broker to represent their trading interest on the trading floor as compared to a Specialist or Market Maker that could directly transact such orders on the trading floor. For these reasons, the Exchange is encouraging Specialists and Market Makers to transact NDX and MNX on the trading floor and recognizing the obligations of these market participants as compared to other market participants.

The Exchange's proposal to eliminate the Marketing Fee for NDX and MNX does not impose an undue burden on intra-market competition because the elimination of this

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<sup>36</sup> See note 28.



fee will cause Specialists and Market Makers to continue to be assessed a lower total charge for the transaction as compared to other market participants.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>37</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed 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.

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

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

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.

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<sup>37</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. Applicable portion of the Exchange's Pricing Schedule.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2017-24)

March \_\_, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Pricing for NDX and MNX

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 March 9, 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 II, entitled “Multiply Listed Options Fees,”<sup>3</sup> to amend pricing related to options overlying NDX<sup>4</sup> and MNX.<sup>5</sup>

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

<sup>4</sup> NDX represents options on the Nasdaq 100 Index traded under the symbol NDX (“NDX”).

<sup>5</sup> MNX represents options on one-tenth the value of the Nasdaq 100 Index traded under the symbol MNX (“MNX”).

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 Exchange proposes to amend pricing related to NDX and MNX by adopting Options Transaction Charges for NDX and MNX and also eliminating the Marketing Fee for NDX and MNX.<sup>6</sup> The Exchange notes that both NDX and MNX are transitioning to be exclusively listed on the Exchange and its affiliated markets in 2017.<sup>7</sup>

Today, the Exchange assesses transactions in NDX and MNX the following Options Transaction Charges for non-Penny Pilot Options: a \$0.75 per contract for

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<sup>6</sup> The Exchange initially filed the proposed pricing change on February 28, 2017 (SR-Phlx-2017-20). On March 8, 2017, the Exchange withdrew that filing and submitted this filing.

<sup>7</sup> The Exchange will exclusively list NDX and MNX in the near future upon expiration of open expiries in these products on other markets.

electronic Professional<sup>8</sup> transactions and \$0.25 per contract for floor Professional transactions; \$0.25 per contract for Specialist<sup>9</sup> and Market Maker<sup>10</sup> electronic transactions and \$0.35 per contract for Specialist and Market Maker floor transactions; \$0.75 per contract for Broker-Dealer<sup>11</sup> electronic transactions and \$0.25 per contract for floor Broker-Dealer transactions; and \$0.75 per contract for Firm<sup>12</sup> electronic transactions and \$0.25 per contract for Firm floor transactions. Today, Customers<sup>13</sup> are not assessed a

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<sup>8</sup> The term “Professional” applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(14).

<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” 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).

<sup>11</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>12</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>13</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)).

non-Penny Options Transaction Charge for NDX and MNX transactions. Also, today, all Non-Customers<sup>14</sup> are assessed a \$0.25 per contract surcharge in NDX and MNX.

The Exchange proposes to indicate that the Options Transaction charges for non-Penny Pilot Options will not apply to NDX and MNX transactions and instead adopt new pricing for NDX and MNX. The Exchange proposes to adopt the following Options Transaction Charges for NDX and MNX. Customers will continue to not be assessed an Options Transaction Charge for NDX and MNX. Professionals will be assessed the same \$0.75 per contract electronic Options Transaction Charge and an increased floor Options Transaction Charge of \$0.75 per contract<sup>15</sup> for NDX and MNX transactions. A Specialist and Market Maker will be assessed an increased electronic Options Transaction Charge of \$0.75 per contract<sup>16</sup> and the same \$0.35 per contract floor Options Transaction Charge for NDX and MNX transactions. A Broker-Dealer will be assessed the same \$0.75 per contract electronic Options Transaction Charge and an increased floor Options Transaction Charge of \$0.75 per contract<sup>17</sup> for NDX and MNX transactions. Finally, a Firm will be assessed the same \$0.75 per contract electronic Options Transaction Charge and an increased floor Options Transaction Charge of \$0.75 per contract<sup>18</sup> for NDX and

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<sup>14</sup> The term “Non-Customer” applies to transactions for the accounts of Specialists, Market Makers, Firms, Professionals, Broker-Dealers and Joint Back Office.

<sup>15</sup> Today, a Professional is assessed a \$0.25 per contract floor Options Transaction Charge when transacting NDX and MNX.

<sup>16</sup> Today, a Specialist and Market Maker are assessed a \$0.25 per contract floor Options Transaction Charge when transacting NDX and MNX.

<sup>17</sup> Today, a Broker-Dealer is assessed a \$0.25 per contract floor Options Transaction Charge when transacting NDX and MNX.

<sup>18</sup> Today, a Firm is assessed a \$0.25 per contract floor Options Transaction Charge when transacting NDX and MNX.

MNX transactions. The Exchange will continue to assess Non-Customers an Options Surcharge for NDX and MNX of \$0.25 per contract as is the case today.<sup>19</sup> The Exchange is proposing to relocate the surcharge to a new note 5 within the Pricing Schedule instead of stating the pricing within the current table in Section II of the Pricing Schedule.

The Exchange is also proposing to note that a Marketing Fee<sup>20</sup> will not be assessed on NDX and MNX. Today, for trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange, Specialists, Market Makers and Directed ROTs are assessed certain fees on those trades when the Specialist unit or Directed ROT elects to participate in the marketing program. Specifically, the Exchange assesses options that are trading in the Penny Pilot Program \$0.25 per contract and the remaining equity options are assessed \$0.70 per contract (including NDX and MNX). No Marketing Fees are assessed on trades that are not delivered electronically. No Marketing Fees are assessed on Professional orders. Marketing Fees are assessed on transactions resulting from Customer orders and are

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<sup>19</sup> For clarity, the Exchange is amending the Customer charge from “N/A” to “\$0.00.” The Exchange believes that \$0.00 is more appropriate to reflect no charge.

<sup>20</sup> The Exchange’s Marketing Fee helps its Specialists and Directed Registered Options Traders (“Directed ROTs”) establish payment arrangements with an order flow provider in exchange for that order flow provider directing some or all of its order flow to that Specialist or Directed ROT. This program is funded through fees paid by Registered Options Traders (“ROT”), Specialists and Directed ROTs and assessed on transactions resulting from customer orders. A Registered Option Trader 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. See Exchange Rule 1014 (b)(i) and (ii). A “Directed ROT” is an ROT who is a Directed Participant. The term “Directed Participant” applies to transactions for the account of a Specialist or ROT resulting from a customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

available to be disbursed by the Exchange according to the instructions of the Specialist units/Specialists or Directed ROTs to order flow providers who are members or member organizations, who submit, as agent, Customer orders to the Exchange or non-members or non-member organizations who submit, as agent, Customer orders to the Exchange through a member or member organization who is acting as agent for those Customer orders.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>22</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>23</sup>

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<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>23</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).



Likewise, in NetCoalition v. Securities and Exchange Commission<sup>24</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>25</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>26</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>27</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.

The Exchange’s proposal to increase the floor Options Transaction Charges for Professionals, Firms and Broker-Dealers from \$0.25 to \$0.75 per contract for NDX and MNX is reasonable because the Exchange is assessing the same transaction fee whether the transaction occurred electronically or on the Exchange’s trading floor for these

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<sup>24</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>25</sup> See NetCoalition, at 534 - 535.

<sup>26</sup> Id. at 537.

<sup>27</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)).

market participants. The Exchange's increase for this proprietary product is competitive when compared with similar proprietary products.<sup>28</sup>

With respect to Specialists and Market Makers, the electronic Options Transaction Charge for NDX and MNX will be \$0.75 per contract, similar to other Non-Customer market participants. The Exchange believes that it is reasonable to assess Specialists and Market Makers the same electronic Options Transactions Charge in NDX and MNX as other market participants, except Customers. The Exchange's increase for this proprietary product is competitive when compared with similar proprietary products.<sup>29</sup> The Specialist and Market Maker floor Options Transaction Charge is not being amended and will remain at \$0.35 per contract. The Exchange will continue to assess a Specialist and Market Maker Options Transaction Charge of \$0.35 per contract for floor transactions in NDX and MNX because the Exchange desires to incentivize Specialists and Market Makers to continue to make markets in the NDX and MNX products on the trading floor.

The Exchange's proposal to increase the floor Options Transaction Charges for Professionals, Firms and Broker-Dealers from \$0.25 to \$0.75 per contract for NDX and MNX is equitable and not unfairly discriminatory because the Exchange will uniformly

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<sup>28</sup> See Chicago Board Options Exchange, Incorporated's ("CBOE") Fees Schedule. Russell 2000 Index ("RUT") options transactions on CBOE, except customers, are assessed a \$0.45 per contract surcharge. CBOE assesses Professionals and Broker-Dealers a manual and AIM transaction fee of \$0.25 per contract and a non-AIM transaction fee of \$0.65 per contract. CBOE assesses Clearing Trade Permit Holders a transaction fee of \$0.22 per contract, subject to a sliding scale.

<sup>29</sup> See CBOE's Fees Schedule. RUT transactions on CBOE, except customers, are assessed a \$0.45 per contract surcharge. CBOE assesses market makers a manual and AIM transaction fee of \$0.25 per contract for RUT transactions. CBOE assesses market makers a non-AIM electronic transaction fee of \$0.65 per contract for RUT transactions.

assess a \$0.75 per contract Options Transaction Charges for all market participants, except for Customers, Specialists and Market Makers transacting on the floor, regardless of whether the transaction is submitted electronically or on the floor. The Exchange believes that assessing Customers no transaction fee for NDX and MNX 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.

With respect to Specialists and Market Makers, the electronic Options Transaction Charge for NDX and MNX will be \$0.75 per contract, similar to other market participants. While this fee is increasing from \$0.25 to \$0.75 per contract, the Exchange, as proposed herein, will no longer assess a Marketing Fee for transactions in NDX and MNX, thereby effectively lowering the rate. For example, today, a Specialist or Market Maker transacting an electronic order in NDX or MNX will be assessed a \$0.25 per contract Options Transaction Charge in non-Penny Pilot Options, a \$0.25 per contract Options Surcharge and a \$0.70 per contract Marketing Fee for a total charge of \$1.20. With this proposal, a Specialist or Market Maker transacting an electronic order for NDX or MNX will be assessed a \$0.75 per contract Options Transaction Charge and a \$0.25 per contract Options Surcharge for a total charge of \$1.00. No Marketing Fee would be assessed. While all Non-Customer market participants would be assessed an electronic Options Transaction Charge of \$0.75 per contract for NDX or MNX, a

Specialist or Market Maker will be assessed a lower total transaction charge as explained above, compared to today.

The Exchange believes that assessing Specialist and Market Makers a lower floor Options Transaction Charge of \$0.35 per contract for options overlying NDX and MNX and a higher electronic Options Transaction Charge of \$0.75 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.<sup>30</sup> 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. Further, Specialists and Market Makers have a time and place advantage on the trading floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a floor broker to represent their trading interest on the trading floor as compared to a Specialist or Market Maker that could directly transact such orders on the trading floor. For these reasons, the Exchange is encouraging Specialists and Market Makers to transact NDX

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See Phlx Rule 1014.

and MNX on the trading floor and recognizing the obligations of these market participants as compared to other market participants.

The Exchange notes that the proposed rule changes are reasonable, equitable and not unfairly discriminatory as NDX and MNX transition to exclusively listed products. Similar to other proprietary products, the Exchange seeks to recoup the operational costs<sup>31</sup> for listing proprietary products. Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.<sup>32</sup> Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact options overlying NDX and MNX or separately execute options overlying PowerShares QQQ Trust (“QQQ”).<sup>33</sup> Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact NDX and MNX.<sup>34</sup> When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

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<sup>31</sup> By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a Multiply Listed Option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

<sup>32</sup> See pricing for RUT on CBOE’s Fees Schedule.

<sup>33</sup> QQQ is an exchange-traded fund based on the Nasdaq-100 Index®.

<sup>34</sup> By comparison, a market participant may trade options overlying RUT or separately the market participant has the choice of trading iShares Russell 2000 Index Fund (“IWM”) Exchange-Traded Fund Shares options, which are also multiply listed.

The Exchange's proposal to eliminate the Marketing Fee for NDX and MNX is reasonable because in light of the transition of NDX and MNX to exclusively listed products and new pricing, the Exchange is increasing the Specialist and Market Maker electronic Options Transaction Charges for options overlying NDX and MNX. By removing the Marketing Fee, Specialists and Market Makers will avoid an increase in costs.

The Exchange's proposal to eliminate the Marketing Fee for NDX and MNX is equitable and not unfairly discriminatory because in light of the transition of NDX and MNX to exclusively listed products and new pricing, the elimination of this fee will cause Specialists and Market Makers to continue to be assessed a lower total charge for the transaction as compared to other market participants.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if 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 change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets or will impose any inter-market burden on competition for the reasons stated above.

The Exchange's proposal to increase the floor Options Transaction Charges for Professionals, Firms and Broker-Dealers from \$0.25 to \$0.75 per contract for NDX and MNX does not impose an undue burden on intra-market competition because the Exchange will uniformly assess a \$0.75 per contract Options Transaction Charges for all market participants, except for Customers and Specialists and Markets transacting on the floor, regardless of whether the transaction is submitted electronically or on the floor. The Exchange believes that assessing Customers no transaction fee for NDX and MNX 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 attract 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. It is also important to note that despite the fee increases with respect to NDX, members may continue to separately execute options overlying PowerShares QQQ Trust ("QQQ").<sup>35</sup>

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<sup>35</sup> By comparison, a market participant may trade options overlying RUT or separately the market participant has the choice of trading iShares Russell 2000 Index Fund ("IWM") Exchange-Traded Fund Shares options, which are also multiply listed.

With respect to Specialists and Market Makers, increasing the electronic Options Transaction Charge for NDX and MNX from \$0.25 to \$0.75 per contract, the Exchange, as proposed herein, does not impose an undue burden on intra-market competition as the Exchange will no longer assess a Marketing Fee for on NDX and MNX, thereby effectively lowering the rate. The Exchange believes that assessing Specialists and Market Makers a lower floor Options Transaction Charge of \$0.35 per contract for NDX and MNX and a higher electronic Options Transaction Charge of \$0.75 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.<sup>36</sup> 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. Further, Specialists and Market Makers have a time and place advantage on the trading floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer or a Firm would necessarily require a floor broker to represent their trading interest on the trading floor as compared to a Specialist or Market Maker that could directly transact such orders on the

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<sup>36</sup>See note 28.



trading floor. For these reasons, the Exchange is encouraging Specialists and Market Makers to transact NDX and MNX on the trading floor and recognizing the obligations of these market participants as compared to other market participants.

The Exchange's proposal to eliminate the Marketing Fee for NDX and MNX does not impose an undue burden on intra-market competition because the elimination of this fee will cause Specialists and Market Makers to continue to be assessed a lower total charge for the transaction as compared to other market participants.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>37</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>37</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-2017-24 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-2017-24. 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-2017-24 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>38</sup>

Robert W. Errett  
Deputy Secretary

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<sup>38</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined; deleted text is in brackets.*

**NASDAQ PHLX Rules**

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**NASDAQ PHLX LLC PRICING SCHEDULE  
THE EXCHANGE CALCULATES FEES ON A TRADE DATE BASIS.**

**POLICY FOR AMENDING BILLING INFORMATION: CORRECTIONS SUBMITTED AFTER TRADE DATE AND PRIOR TO THE ISSUANCE OF AN INVOICE BY THE EXCHANGE MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ONLY MEMBERS MAY SUBMIT TRADE CORRECTIONS.**

**ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. THE EXCHANGE CALCULATES FEES ON A TRADE DATE BASIS. ONLY MEMBERS MAY SUBMIT BILLING DISPUTES.**

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

	Customer	Professional		Specialist and Market Maker		Broker-Dealer		Firm	
		Electronic	Floor	Electronic	Floor	Electronic	Floor	Electronic	Floor
<b>Options Transaction Charge (Penny Pilot)</b>	\$0.00	\$0.48 <sup>2</sup>	\$0.25	\$0.22	\$0.35	\$0.48 <sup>2</sup>	\$0.25	\$0.48 <sup>1, 2</sup>	\$0.25
<b>Options Transaction Charge (non-Penny Pilot)<sub>2</sub></b>	\$0.00	\$0.75 <sup>3</sup>	\$0.25	\$0.25 <sup>4</sup>	\$0.35	\$0.75 <sup>3</sup>	\$0.25	\$0.75 <sup>1, 3</sup>	\$0.25

<u>excluding NDX and MNX</u>									
<b>[Options Surcharge in MNX and NDX]</b>	[N/A]	[\$0.25]	[\$0.25]	[\$0.25]	[\$0.25]	[\$0.25]	[\$0.25]	[\$0.25]	[\$0.25]
<b><u>Options Transaction s Charge NDX and MNX<sup>5</sup></u></b>	<u>\$0.00</u>	<u>\$0.75</u>	<u>\$0.75</u>	<u>\$0.75</u>	<u>\$0.35</u>	<u>\$0.75</u>	<u>\$0.75</u>	<u>\$0.75</u>	<u>\$0.75</u>
<b>Options Surcharge in BKK</b>	N/A	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10
<b>Cabinet Options</b>	\$0.00	N/A	\$0.10	N/A	\$0.10	N/A	\$0.10	N/A	\$0.10

- These fees are per contract.

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

<sup>2</sup>Electronic Complex Orders will be assessed \$0.40 per contract.

<sup>3</sup>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 Schedule will be assessed \$0.65 per contract.

<sup>4</sup>Any 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.

<sup>5</sup> For transactions in NDX and MNX, a surcharge of \$0.25 will be assessed to Non-Customers.

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

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**Marketing Fees**

Options that are trading in the Penny Pilot Program	\$0.25 per contract
Remaining Equity Options	\$0.70 per contract

- For trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange, the above fees will be assessed on Specialists, Market Makers and Directed ROTs on those trades when the Specialist unit or Directed ROT elects to participate in the Marketing program.
- No Marketing Fees will be assessed on transactions in NDX and MNX.
- No Marketing Fees will be assessed on trades that are not delivered electronically.
- No Marketing Fees will be assessed on Professional orders.
- No Marketing Fees will be assessed on transactions which execute against an order for which the Exchange broadcast an order exposure alert in Penny Pilot Options.
- Marketing Fees will be assessed on transactions resulting from Customer orders and are available to be disbursed by the Exchange according to the instructions of the Specialist units/Specialists or Directed ROTs to order flow providers who are members or member organizations, who submit, as agent, Customer orders to the Exchange or non-members or non-member organizations who submit, as agent, Customer orders to the Exchange through a member or member organization who is acting as agent for those Customer orders.
- Any excess Marketing Fee funds billed but not utilized by the Specialist or Directed ROT will be carried forward unless the Directed ROT or Specialist elects to have those funds rebated to the applicable ROT, Directed ROT or Specialist on a pro rata basis, reflected as a credit on the monthly invoices. At the end of each calendar quarter, the Exchange will calculate the amount of excess funds from the previous quarter and subsequently rebate excess funds on a pro-rata basis to the applicable ROT, Directed ROT or Specialist who paid into that pool of funds.
- Each month, the Exchange will assess an administrative fee of .45% on the total amount of the funds collected each month.

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