

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="26"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2017"/> - * <input type="text" value="64"/>	Amendment No. (req. for Amendments *) <input type="text"/>
---	--	--	--

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

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

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

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
---	---

Description

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

A proposal to amend the Exchanges 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 executions.

Contact Information

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

First Name * <input type="text" value="Brett"/>	Last Name * <input type="text" value="Kitt"/>
Title * <input type="text" value="Senior Associate General Counsel"/>	
E-mail * <input type="text" value="Brett.Kitt@nasdaq.com"/>	
Telephone * <input type="text" value="(301) 978-8132"/>	Fax <input type="text"/>

Signature

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

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

(Title *)

Date <input type="text" value="07/31/2017"/>	<input type="text" value="Executive Vice President and General Counsel"/>
By <input type="text" value="Edward S. Knight"/>	<input type="text" value="edward.knight@nasdaq.com"/>

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

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 *

Add Remove View

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 *

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) NASDAQ PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “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 PIXL³ executions.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on August 1, 2017.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ PIXLTM 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).

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:

Brett M. Kitt
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8132.

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

First, the Exchange proposes to increase the SPY Complex PIXL rebate it offers Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers⁵ 2 through 6 or qualify for the Monthly Firm Fee Cap. Presently, the Exchange

⁴ 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.

⁵ 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

offers 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 proposes to increase that rebate to \$0.12 per contract. In doing so, 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.

Second, the Exchange proposes to increase the Complex PIXL (excluding SPY Options) rebate it offers to Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap. Presently, the Exchange offers 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 proposes to increase that rebate to \$0.12 per contract. In doing so, the Exchange desires to incentivize members and member organizations to transact a greater number of Complex PIXL Orders while also incentivizing members and member organizations to submit Customer order flow on Phlx to obtain the \$0.12 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,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ in

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

⁶ 15 U.S.C. 78f(b).

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.”⁸

Likewise, in NetCoalition v. Securities and Exchange Commission⁹ (“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.¹⁰ 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.”¹¹

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁰ See NetCoalition, at 534 - 535.

¹¹ Id. at 537.

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹² Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that its proposal is reasonable to offer to Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap an increased rebate of \$0.12 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 proposed rebate increase will incentivize members and member organizations to transact a greater number of SPY Complex PIXL Orders will also incentivize members and member organizations to submit Customer order flow on Phlx. All members and member organizations are eligible for this increased rebate.

The Exchange also believes that its proposal is equitable and not unfairly discriminatory because all members and member organizations are eligible for the proposed rebate increase, provided they met the requisite qualifications. Members and member organizations would be uniformly paid the increased rebate.

¹² Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

The Exchange also believes that its proposal is reasonable to offer to Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap an increased rebate of \$0.12 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 SPY Complex PIXL Orders in a month. The proposed increased rebate will incentivize members and member organizations to transact a greater number of Complex PIXL Orders and will also incentivize 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.

This proposal is equitable and not unfairly discriminatory because all members and member organizations are eligible for the proposed increased rebate, provided that they meet the requisite qualifications.

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.

The Exchange believes that increasing its rebates will promote inter-market competition by differentiating it from other options exchanges (e.g., MIAX) and making it a more attractive options trading venue.

The Exchange also believes that its proposal does not impose an undue burden on intra-market competition to 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 an increased rebate of \$0.12 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. All members and member organizations are eligible for the proposed rebate increase, provided they met the requisite qualifications. Members and member organizations would be uniformly paid the increased rebate.

For the same reasons, the Exchange does not believe that its proposal imposes an undue burden on intra-market competition to offer to Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap an increased rebate of \$0.12 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 SPY Complex PIXL Orders in a month.

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,¹³ 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.

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

Not applicable.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2017-64)

August __, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on July 31, 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 PIXL³ executions.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ PIXLTM 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).

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on August 1, 2017.

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

⁴ 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.

First, the Exchange proposes to increase the SPY Complex PIXL rebate it offers Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers⁵ 2 through 6 or qualify for the Monthly Firm Fee Cap. Presently, the Exchange offers 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 proposes to increase that rebate to \$0.12 per contract. In doing so, 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.

Second, the Exchange proposes to increase the Complex PIXL (excluding SPY Options) rebate it offers to Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap. Presently, the Exchange offers 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 proposes to increase that rebate to \$0.12 per contract. In doing so, the Exchange desires to incentivize members and member

⁵ 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.

organizations to transact a greater number of Complex PIXL Orders while also incentivizing members and member organizations to submit Customer order flow on Phlx to obtain the \$0.12 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,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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.”⁸

Likewise, in NetCoalition v. Securities and Exchange Commission⁹ (“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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

Congress mandated a cost-based approach.¹⁰ 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.”¹¹

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’ . . .”¹² Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that its proposal is reasonable to offer to Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap an increased rebate of \$0.12 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 proposed rebate increase will incentivize members and member organizations to transact a greater number of SPY Complex PIXL Orders will also

¹⁰ See NetCoalition, at 534 - 535.

¹¹ Id. at 537.

¹² 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)).

incentivize members and member organizations to submit Customer order flow on Phlx. All members and member organizations are eligible for this increased rebate.

The Exchange also believes that its proposal is equitable and not unfairly discriminatory because all members and member organizations are eligible for the proposed rebate increase, provided they met the requisite qualifications. Members and member organizations would be uniformly paid the increased rebate.

The Exchange also believes that its proposal is reasonable to offer to Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap an increased rebate of \$0.12 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 SPY Complex PIXL Orders in a month. The proposed increased rebate will incentivize members and member organizations to transact a greater number of Complex PIXL Orders and will also incentivize 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.

This proposal is equitable and not unfairly discriminatory because all members and member organizations are eligible for the proposed increased rebate, provided that they meet the requisite qualifications.

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.

The Exchange believes that increasing its rebates will promote inter-market competition by differentiating it from other options exchanges (e.g., MIAX) and making it a more attractive options trading venue.

The Exchange also believes that its proposal does not impose an undue burden on intra-market competition to 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 an increased rebate of \$0.12 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. All members and member organizations are eligible for the proposed rebate increase, provided they met the requisite qualifications. Members and member organizations would be uniformly paid the increased rebate.

For the same reasons, the Exchange does not believe that its proposal imposes an undue burden on intra-market competition to offer to Phlx members and member

organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap an increased rebate of \$0.12 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 SPY Complex PIXL Orders in a month.

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.¹³

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

IV. Solicitation of Comments

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

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2017-64 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2017-64. 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-2017-64 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.¹⁴

Eduardo A. Aleman
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

NASDAQ PHLX Rules

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.

* * * * *

NASDAQ PHLX LLC PRICING SCHEDULE

* * * * *

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

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

Part A. Simple Order

Customer Specialist	Market Maker	Firm	Broker- Dealer	Professional
---------------------	-----------------	------	-------------------	--------------

Rebate for Adding Liquidity	\$0.00	*	*	\$0.00	\$0.00	\$0.00
Fee for Removing Liquidity	\$0.45	\$0.48	\$0.48	\$0.48	\$0.48	\$0.48

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

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

Part B. Complex Order

	Customer Specialist	Market Maker	Firm	Broker-Dealer	Professional
Fee for Adding Liquidity	\$0.00	\$0.10	\$0.10	\$0.10	\$0.10
Fee for Removing Liquidity	\$0.00	\$0.43	\$0.43	\$0.50	\$0.50

- Complex Order Fees for Removing Liquidity, applicable to Specialists and Market Makers, will be decreased by \$0.02 per contract when the Specialist or Market Maker transacts against a Customer Order directed to that Specialist or Market Maker for execution.

- Simple Orders that are executed against the individual components of Complex Orders will be assessed the fees and rebates in Part A. However, the individual components of such a Complex Order will be assessed the fees in Part B.

- Customers will be assessed \$0.00 per contract and all other market participants will be assessed \$0.15 per contract for executions against an order for which the Exchange broadcasts an order exposure alert in SPY.

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

- The Monthly Market Maker Cap on transaction fees that are currently applicable to Market Makers and Specialists transacting Multiply Listed Options will not be applicable to electronic transactions in the SPY, except for QCC Transaction Fees.
- The Monthly Firm Fee Cap will apply to floor transactions and QCC electronic and QCC floor transactions in SPY.
- Marketing Fees defined in Section II will not be collected on transactions in SPY.
- The Cancellation Fee for each cancelled electronically delivered Professional AON order will continue to apply to the SPY. The Cancellation Fee will not apply for each cancelled electronically delivered Customer order in SPY.
- Transactions in SPY originating on the Exchange floor will be subject to the Multiply Listed Options Fees (see Multiply Listed Options Fees in Section II). However, if one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, then these fees will apply to the transactions which originated on the Exchange floor and contracts that are executed electronically on all sides of the transaction. The one side of the transaction which originates on the Exchange floor will count toward the volume which qualifies a participant for the Simple Order Rebate for Adding Liquidity for Specialists and Market Makers in SPY.
- A non-Complex electronic auction includes the Quote Exhaust auction and, for purposes of these fees, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction ("COLA").
 - Customer executions that occur as part of a Complex electronic auction will be assessed \$0.00 per contract.
 - Customer executions that occur as part of a non-Complex electronic auction will be assessed \$0.00 per contract.
 - Professional, Firm, Broker-Dealer, Specialist and Market Maker executions that occur as part of a Complex electronic auction will be assessed the Fees for Removing Liquidity in Part B. Professional, Firm, Broker-Dealer, Specialist and Market Maker executions that occur as part of a non-Complex electronic auction will be assessed the Fees for Adding Liquidity in Part B.

- The QCC Transaction fees and rebates, defined in Section II, are applicable to this Section C.

PIXL Executions in SPY:

- Initiating Order: \$0.05 per contract. 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~~]\$0.12 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 PIXL Order is a Customer, in which case the Customer will receive a rebate of \$0.40 per contract.
- All other Non-Customer contra parties to the PIXL Order that are not the Initiating Order will be assessed a Fee for Removing Liquidity of \$0.50 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.

* * * * *

IV. Other Transaction Fees

A. PIXL Pricing

Initiating Order \$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. 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~~]\$0.12 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.

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.

* * * * *