

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 46	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2018 - * 02	Amendment No. (req. for Amendments *)	
Filing by Nasdaq PHLX LLC Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <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 Section 806(e)(1) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/>		Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>			
<b>Description</b> Provide a brief description of the action (limit 250 characters, required when Initial is checked *).  A proposal to amend the Exchanges Pricing Schedule					
<b>Contact Information</b> 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					
<b>Signature</b> 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 01/03/2018 By Edward S. Knight (Name *) Executive Vice President and General Counsel  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 to add pricing for P.M.-settled options on broad-based indexes with nonstandard expiration dates for a period of twelve months, which the Commission recently approved.<sup>3</sup>

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 4, 2018.

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 September 19, 2017. 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> See Securities and Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (SR-Phlx-2017-79).

Angela Saccomandi Dunn  
Principal Associate General Counsel  
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3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The Exchange recently received approval to list P.M.-settled options on broad-based indexes with nonstandard expiration dates on a twelve month pilot basis, beginning on December 15, 2017.<sup>4</sup> This pilot permits both Weekly Expirations and End of Month expirations similar to those of the A.M.-settled broad-based index options, except that the exercise settlement value will be based on the index value derived from the closing prices of component stocks.<sup>5</sup> The Exchange proposes to list these aforementioned options, commencing on January 4, 2017, with the symbol "NDXP."

Specifically, the Exchange proposes to adopt the current index pricing applicable to NDX<sup>6</sup> today to NDXP.

Customer Rebate

Today, Customer Rebates in Section B of the Pricing Schedule are not paid on NDX in any Category. However, NDX will count toward the volume requirement to qualify for a Customer<sup>7</sup> Rebate Tier. The Exchange proposes to apply the same pricing

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<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> NDX represents options on the Nasdaq 100<sup>®</sup> Index and is traded under the symbol NDX ("NDX").

<sup>7</sup> The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") and which is not for the account of broker or dealer or for

for NDXP as it relates to Customer Rebates. The Exchange believes that this will continue to encourage market participants to add Customer liquidity on Phlx.

#### Transaction Charges in Section II

Today, electronic and floor Options Transaction Charges for NDX are \$0.75 per contract for all Non-Customers. No transaction charge for NDX applies to Customers. A \$0.25 per contract<sup>8</sup> surcharge is assessed to Non-Customers in NDX. The Exchange proposes these options transaction charges for NDXP. Today, a \$0.10 per contract surcharge will be assessed to electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Pilot Options (excluding NDX). This exclusion would apply likewise to NDXP.

Today, Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying NDX; and (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)). NDXP would likewise be excluded.

Firms are subject to a maximum fee of \$75,000 ("Monthly Firm Fee Cap"). Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary accounts. All dividend, merger, and short stock interest strategy executions (as defined in this Section II) are excluded from

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the account of a "Professional" (as that term is defined in Chapter I, Section 1(a)(48)).

<sup>8</sup> The Exchange proposes to add the words "per contract" to note 5 in Section II of the Pricing Schedule to make clear that the surcharge is assessed on a per contract basis.

the Monthly Firm Fee Cap. NDX Options Transactions are excluded from the Monthly Firm Fee Cap. NDXP will likewise be excluded.

The Firm Floor Options Transaction Charges will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary accounts (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represent both sides of a Firm transaction when such members are trading in their own proprietary accounts. In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur this charge for trading in their own proprietary accounts contra to a Customer (“BD-Customer Facilitation”), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month. NDX Options Transactions are excluded from each of the waivers set forth in the above paragraph. NDXP will likewise be excluded from the waivers.

#### Marketing Fees

No Marketing Fees are assessed on transactions in NDX. NDXP will likewise be excluded.

#### PIXL Pricing

Options overlying NDX are not subject to Section IV.A. – PIXL Pricing. NDX transactions in PIXL will be subject to Section II pricing. NDXP will not be subject to

PIXL Pricing, similar to NDX, NDXP will be subject to the Section II pricing noted herein.

FLEX Transaction Fees

The Monthly Firm Fee Cap, Monthly Market Maker Cap, Strategy Caps and the Options Surcharge described in Section II of the Pricing Schedule apply to FLEX Transaction Fees for NDX and will likewise apply to NDXP in the same manner.

Market Access and Routing Subsidy (“MARS”)

MARS Payment are made to Phlx members that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month, which were executed on Phlx. Options overlying NDX are not considered Eligible Contracts. NDXP will not be considered Eligible Contracts.

The Exchange believes that the above-referenced pricing for NDX continues to be competitive and attract volume to Phlx. The Exchange believes that the proposed pricing is suitable because NDXP represent similar options on the same underlying, the Nasdaq 100<sup>®</sup> Index.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</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.

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

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>11</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>12</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>13</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>14</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

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<sup>11</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>12</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>13</sup> See NetCoalition, at 534 - 535.

<sup>14</sup> Id. at 537.



otherwise, in the execution of order flow from broker dealers' ...."<sup>15</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.

#### Customer Rebate

The Exchange's proposal to not pay the Customer Rebates in Section I of the Pricing Schedule on NDXP and count NDXP volume toward qualifying for a Customer Rebate Tier, similar to NDX, is reasonable because the Exchange desires to calculate and pay rebates on NDXP in a similar manner to NDX. NDX and NDXP represent similar options on the same underlying, the Nasdaq 100<sup>®</sup> Index. Further, it is reasonable to not pay Customer Rebates on NDXP in any Category (A, B or C) because this index will be exclusively listed on Nasdaq exchanges only.<sup>16</sup> The original intent of the Customer Rebate Program was to pay rebates on electronically-delivered Multiply-Listed Options. By definition, NDXP will not be a Multiply-Listed Option. The Exchange does not desire to pay rebates on NDXP because of its exclusivity. The Exchange believes it is reasonable to continue to count NDXP in the total volume to qualify a market participant for a Customer Rebate. However, market participants in NDXP will not be paid the Customer rebates in any Category because of the exclusivity of this option. Market participants would continue to benefit from NDXP options volume in terms of qualifying for Customer Rebate Tiers.

The Exchange's proposal to not pay the Customer Rebates in Section I of the

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<sup>15</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>16</sup> Nasdaq intends to list NDXP on other Nasdaq-owned self-regulatory organizations in addition to Phlx at a later date.

Pricing Schedule on NDXP and count NDXP volume toward qualifying for a Customer Rebate Tier, similar to NDX, is equitable and not unfairly discriminatory because the Exchange would apply its calculation to determine the eligibility and payment of Customer rebates in a uniform manner. Further, the Exchange would not pay Customer Rebates on any NDXP transaction to any market participant. Also, any market participant is eligible to earn a Customer Rebate.

#### Transaction Charges in Section II

The Exchange's proposal to assess the same electronic and floor Options Transaction Charges for NDXP as it assesses for NDX<sup>17</sup> is reasonable because the Exchange's transaction charges for its proprietary products are competitive when compared with similar proprietary products.<sup>18</sup> The Exchange's proposal to assess the same electronic and floor Options Transaction Charges for NDXP and NDX is equitable and not unfairly discriminatory because the Exchange would assess the same options transaction charges to all Non-Customer market participants. The Exchange believes that assessing Customers no transaction fee for NDXP is equitable and not unfairly discriminatory because Customer orders bring valuable liquidity to the market, which

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<sup>17</sup> Today, electronic and floor Options Transaction Charges for options overlying NDX are \$0.75 per contract for all Non-Customers. No transaction charge for NDX applies to Customers. A \$0.25 per contract surcharge is assessed to Non-Customers in NDX. Also, a \$0.10 per contract surcharge is assessed to electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Pilot Options (excluding NDX).

<sup>18</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.

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

The Exchange notes that the proposed transaction charges are reasonable, equitable and not unfairly discriminatory as NDXP will be an exclusively listed product. Similar to NDX, the Exchange seeks to recoup the operational costs<sup>19</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>20</sup> Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact NDXP or separately execute options overlying PowerShares QQQ Trust (“QQQ”).<sup>21</sup> Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100<sup>®</sup> Index.<sup>22</sup> When exchanges are able to recoup costs associated with offering proprietary

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<sup>19</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>20</sup> See pricing for RUT on CBOE’s Fees Schedule.

<sup>21</sup> QQQ is an exchange-traded fund based on the Nasdaq-100 Index<sup>®</sup>.

<sup>22</sup> QQQ options overlies the same Index as NDX, namely the Nasdaq 100<sup>®</sup> Index. This relationship between QQQ options and NDX options is similar to the relationship between RUT, the iShares Russell 2000 Index, and IWM which is the ETF on RUT.

products, it incentivizes growth and competition for the innovation of additional products.

The Exchange's proposal to add the words "per contract" to note 5 in Section II of the Pricing Schedule to make clear the surcharge is per contract is reasonable, equitable and not unfairly discriminatory because it will conform the language to the remainder of the transaction charges in Section II of the Pricing Schedule.

The Exchange's proposal to exclude NDXP from the Monthly Market Maker Cap and the Monthly Firm Fee Cap is reasonable because NDX, another proprietary product is likewise excluded today. Market Makers will continue to be able to utilize the cap to reduce electronic Option Transaction Charges, excluding surcharges, QCC transaction fees and Floor QCC Orders, NDX and now NDXP despite the exclusions.

The Exchange's proposal to exclude NDXP from the Monthly Market Maker Cap and the Monthly Firm Fee Cap is equitable and not unfairly discriminatory because no market participant would be eligible to count NDXP toward either the Monthly Market Maker Cap or the Monthly Firm Fee Cap.

The Exchange's proposal to exclude NDXP from the Firm Floor Options Transaction waivers for members executing facilitation orders pursuant to Exchange Rule 1064,<sup>23</sup> from the buy side of a transaction, if the same member or its affiliates under Common Ownership represent both sides of a Firm transaction when such members are trading in their own proprietary account, and from the waiver for the Broker-Dealer Floor

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<sup>23</sup> This waiver applies when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.

Options Transaction Charge for members executing facilitation orders pursuant to Exchange Rule 1064,<sup>24</sup> is reasonable because NDX, another proprietary product is likewise excluded today.

The Exchange's proposal to exclude NDXP from the Firm Floor Options Transaction waivers for members executing facilitation orders pursuant to Exchange Rule 1064,<sup>25</sup> from the buy side of a transaction, if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account, and from the waiver for the Broker-Dealer Floor Options Transaction Charge for members executing facilitation orders pursuant to Exchange Rule 1064,<sup>26</sup> is equitable and not unfairly discriminatory because no market participant would be eligible to count NDXP toward these waivers.

#### Marketing Fee

The Exchange's proposal to exclude NDXP from the Marketing Fee is reasonable because NDXP is an exclusively listed product, similar to NDX, which is also excluded from the Marketing Fee. The Exchange notes that Specialists and Market Makers transaction fees will remain in line with other market participants for NDXP.

The Exchange's proposal to exclude NDXP from the Marketing Fee is equitable and not unfairly discriminatory because the Exchange will assess uniform transaction fees for all Non-Customers because the transaction charges, as proposed above, would otherwise be uniform for all market participants. The Exchange believes that assessing

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<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

Customers no transaction fee for NDXP 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.

#### PIXL Pricing

The Exchange's proposal to exclude NDXP from Section IV.A. – PIXL Pricing and instead assess NDXP transactions in PIXL the Section II pricing, similar to NDX, is reasonable because the Exchange believes that the PIXL pricing continues to be competitive despite the exclusion of NDXP. The Exchange's proposal to exclude NDXP from the PIXL Pricing in Section IV, Part A and instead assess NDXP transactions in PIXL the Section II pricing is equitable and not unfairly discriminatory because the Exchange will uniformly exclude NDXP from PIXL pricing.

#### FLEX Transaction Fees

The Exchange's proposal to assess NDXP the same FLEX Transaction Fees as are assessed for NDX today is reasonable because the Exchange desires to assess the same fees for index products. The Exchange's proposal to assess NDXP the same FLEX Transaction Fees as are assessed for NDX today is equitable and not unfairly discriminatory because the Exchange will uniformly assess FLEX fees for NDXP in a uniform manner for all market participants.

#### Market Access and Routing Subsidy (“MARS”)

The Exchange’s proposal to exclude NDXP from Eligible Contracts for purposes of qualifying for a MARS Payment is reasonable because the Exchange believes that despite the exclusion of NDXP, MARS remains a competitive offering. The Exchange’s proposal to exclude NDXP from Eligible Contracts for purposes of qualifying for a MARS Payment is equitable and not unfairly discriminatory because the Exchange will uniformly exclude NDXP from MARS.

#### 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. The Exchange notes that with its products, market participants are offered an opportunity to either transact NDXP or separately execute options overlying PowerShares QQQ Trust (“QQQ”). Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100 Index.<sup>27</sup>

#### Customer Rebate

The Exchange’s proposal to not pay the Customer Rebates in Section I of the Pricing Schedule on NDXP and count NDXP volume toward qualifying for a Customer Rebate Tier, similar to NDX, does not impose an undue burden on competition because

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<sup>27</sup> See note 22 above.

the Exchange would apply its calculation to determine the eligibility and payment of Customer rebates in a uniform manner. The Exchange's proposal to not pay Customer Rebates on NDXP in any Category is equitable and not unfairly discriminatory because the Exchange would not pay Customer Rebates on any transaction with NDXP to any market participant. Also, any market participant is eligible to earn a Customer Rebate.

#### Transaction Charges in Section II

The Exchange's proposal to assess for the same electronic and floor Options Transaction Charges for NDXP and NDX does not impose an undue burden on competition because the Exchange would assess the same options transaction charges to all Non-Customer market participants. The Exchange believes that assessing Customers no transaction fee for NDXP does not impose an undue burden on competition because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to add the words "per contract" to note 5 in Section II of the Pricing Schedule to make clear the surcharge is per contract does not impose an undue burden on competition because it will conform the language to the remainder of the transaction charges in Section II of the Pricing Schedule.

The Exchange's proposal to exclude NDXP from the Monthly Market Maker Cap and the Monthly Firm Fee Cap does not impose an undue burden on competition because



no market participant would be eligible to count NDXP toward either the Monthly Market Maker Cap or the Monthly Firm Fee Cap.

The Exchange's proposal to exclude NDXP from the Firm Floor Options Transaction waivers for members executing facilitation orders pursuant to Exchange Rule 1064, from the buy side of a transaction, if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account, and from the waiver for the Broker-Dealer Floor Options Transaction Charge for members executing facilitation orders pursuant to Exchange Rule 1064, does not impose an undue burden on competition because no market participant would be eligible to count NDXP toward these waivers.

#### Marketing Fee

The Exchange's proposal to exclude NDXP from the Marketing Fee does not impose an undue burden on competition because the Exchange will assess uniform transaction fees for all Non-Customers because the transaction charges, as proposed above, would otherwise be uniform for all market participants. The Exchange believes that assessing Customers no transaction fee for NDXP does not impose an undue burden on competition because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

### PIXL Pricing

The Exchange's proposal to exclude NDXP from the PIXL Pricing in Section IV, Part A and instead assess NDXP transactions in PIXL the Section II pricing does not impose an undue burden on competition because the Exchange will uniformly exclude NDXP from PIXL pricing.

### FLEX Transaction Fees

The Exchange's proposal to assess NDXP the same FLEX Transaction Fees as are assessed for NDX today does not impose an undue burden on competition because the Exchange will uniformly assess FLEX fees for NDXP in a uniform manner for all market participants.

### MARS Subsidy

The Exchange's proposal to exclude NDXP from Eligible Contracts for purposes of qualifying for a MARS Payment does not impose an undue burden on competition because the Exchange will uniformly exclude NDXP from MARS.

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>28</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

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

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

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.

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-2018-02)

January \_\_\_\_, 2018

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Pricing for NDXP

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 January 3, 2018, 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 to add pricing for P.M.-settled options on broad-based indexes with nonstandard expiration dates for a period of twelve months, which the Commission recently approved.<sup>3</sup>

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 4, 2018.

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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> See Securities and Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (SR-Phlx-2017-79).

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 recently received approval to list P.M.-settled options on broad-based indexes with nonstandard expiration dates on a twelve month pilot basis, beginning on December 15, 2017.<sup>4</sup> This pilot permits both Weekly Expirations and End of Month expirations similar to those of the A.M.-settled broad-based index options, except that the exercise settlement value will be based on the index value derived from the closing prices of component stocks.<sup>5</sup> The Exchange proposes to list these aforementioned options, commencing on January 4, 2017, with the symbol "NDXP."

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<sup>4</sup> Id.

<sup>5</sup> Id.

Specifically, the Exchange proposes to adopt the current index pricing applicable to NDX<sup>6</sup> today to NDXP.

#### Customer Rebate

Today, Customer Rebates in Section B of the Pricing Schedule are not paid on NDX in any Category. However, NDX will count toward the volume requirement to qualify for a Customer<sup>7</sup> Rebate Tier. The Exchange proposes to apply the same pricing for NDXP as it relates to Customer Rebates. The Exchange believes that this will continue to encourage market participants to add Customer liquidity on Phlx.

#### Transaction Charges in Section II

Today, electronic and floor Options Transaction Charges for NDX are \$0.75 per contract for all Non-Customers. No transaction charge for NDX applies to Customers. A \$0.25 per contract<sup>8</sup> surcharge is assessed to Non-Customers in NDX. The Exchange proposes these options transaction charges for NDXP. Today, a \$0.10 per contract surcharge will be assessed to electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Pilot Options (excluding NDX). This exclusion would apply likewise to NDXP.

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<sup>6</sup> NDX represents options on the Nasdaq 100<sup>®</sup> Index and is traded under the symbol NDX (“NDX”).

<sup>7</sup> The term “Customer” or (“C”) applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) and which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Chapter I, Section 1(a)(48)).

<sup>8</sup> The Exchange proposes to add the words “per contract” to note 5 in Section II of the Pricing Schedule to make clear that the surcharge is assessed on a per contract basis.

Today, Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying NDX; and (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)). NDXP would likewise be excluded.

Firms are subject to a maximum fee of \$75,000 ("Monthly Firm Fee Cap"). Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary accounts. All dividend, merger, and short stock interest strategy executions (as defined in this Section II) are excluded from the Monthly Firm Fee Cap. NDX Options Transactions are excluded from the Monthly Firm Fee Cap. NDXP will likewise be excluded.

The Firm Floor Options Transaction Charges will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary accounts (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represent both sides of a Firm transaction when such members are trading in their own proprietary accounts. In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur this charge for trading in their own proprietary accounts contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including

both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month. NDX Options Transactions are excluded from each of the waivers set forth in the above paragraph. NDXP will likewise be excluded from the waivers.

#### Marketing Fees

No Marketing Fees are assessed on transactions in NDX. NDXP will likewise be excluded.

#### PIXL Pricing

Options overlying NDX are not subject to Section IV.A. – PIXL Pricing. NDX transactions in PIXL will be subject to Section II pricing. NDXP will not be subject to PIXL Pricing, similar to NDX, NDXP will be subject to the Section II pricing noted herein.

#### FLEX Transaction Fees

The Monthly Firm Fee Cap, Monthly Market Maker Cap, Strategy Caps and the Options Surcharge described in Section II of the Pricing Schedule apply to FLEX Transaction Fees for NDX and will likewise apply to NDXP in the same manner.

#### Market Access and Routing Subsidy (“MARS”)

MARS Payment are made to Phlx members that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month, which were executed on Phlx. Options overlying NDX are not considered Eligible Contracts. NDXP will not be considered Eligible Contracts.

The Exchange believes that the above-referenced pricing for NDX continues to be competitive and attract volume to Phlx. The Exchange believes that the proposed pricing



is suitable because NDXP represent similar options on the same underlying, the Nasdaq 100<sup>®</sup> Index.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</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>11</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>12</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>11</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>12</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

Congress mandated a cost-based approach.<sup>13</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>14</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>15</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.

#### Customer Rebate

The Exchange’s proposal to not pay the Customer Rebates in Section I of the Pricing Schedule on NDXP and count NDXP volume toward qualifying for a Customer Rebate Tier, similar to NDX, is reasonable because the Exchange desires to calculate and pay rebates on NDXP in a similar manner to NDX. NDX and NDXP represent similar options on the same underlying, the Nasdaq 100<sup>®</sup> Index. Further, it is reasonable to not pay Customer Rebates on NDXP in any Category (A, B or C) because this index will be

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<sup>13</sup> See NetCoalition, at 534 - 535.

<sup>14</sup> Id. at 537.

<sup>15</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)).

exclusively listed on Nasdaq exchanges only.<sup>16</sup> The original intent of the Customer Rebate Program was to pay rebates on electronically-delivered Multiply-Listed Options. By definition, NDXP will not be a Multiply-Listed Option. The Exchange does not desire to pay rebates on NDXP because of its exclusivity. The Exchange believes it is reasonable to continue to count NDXP in the total volume to qualify a market participant for a Customer Rebate. However, market participants in NDXP will not be paid the Customer rebates in any Category because of the exclusivity of this option. Market participants would continue to benefit from NDXP options volume in terms of qualifying for Customer Rebate Tiers.

The Exchange's proposal to not pay the Customer Rebates in Section I of the Pricing Schedule on NDXP and count NDXP volume toward qualifying for a Customer Rebate Tier, similar to NDX, is equitable and not unfairly discriminatory because the Exchange would apply its calculation to determine the eligibility and payment of Customer rebates in a uniform manner. Further, the Exchange would not pay Customer Rebates on any NDXP transaction to any market participant. Also, any market participant is eligible to earn a Customer Rebate.

#### Transaction Charges in Section II

The Exchange's proposal to assess the same electronic and floor Options Transaction Charges for NDXP as it assesses for NDX<sup>17</sup> is reasonable because the

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<sup>16</sup> Nasdaq intends to list NDXP on other Nasdaq-owned self-regulatory organizations in addition to Phlx at a later date.

<sup>17</sup> Today, electronic and floor Options Transaction Charges for options overlying NDX are \$0.75 per contract for all Non-Customers. No transaction charge for NDX applies to Customers. A \$0.25 per contract surcharge is assessed to Non-Customers in NDX. Also, a \$0.10 per contract surcharge is assessed to electronic

Exchange's transaction charges for its proprietary products are competitive when compared with similar proprietary products.<sup>18</sup> The Exchange's proposal to assess the same electronic and floor Options Transaction Charges for NDXP and NDX is equitable and not unfairly discriminatory because the Exchange would assess the same options transaction charges to all Non-Customer market participants. The Exchange believes that assessing Customers no transaction fee for NDXP 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.

The Exchange notes that the proposed transaction charges are reasonable, equitable and not unfairly discriminatory as NDXP will be an exclusively listed product. Similar to NDX, the Exchange seeks to recoup the operational costs<sup>19</sup> for listing

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Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Pilot Options (excluding NDX).

<sup>18</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>19</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.

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>20</sup> Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact NDXP or separately execute options overlying PowerShares QQQ Trust (“QQQ”).<sup>21</sup> Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100<sup>®</sup> Index.<sup>22</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 add the words “per contract” to note 5 in Section II of the Pricing Schedule to make clear the surcharge is per contract is reasonable, equitable and not unfairly discriminatory because it will conform the language to the remainder of the transaction charges in Section II of the Pricing Schedule.

The Exchange’s proposal to exclude NDXP from the Monthly Market Maker Cap and the Monthly Firm Fee Cap is reasonable because NDX, another proprietary product is likewise excluded today. Market Makers will continue to be able to utilize the cap to reduce electronic Option Transaction Charges, excluding surcharges, QCC transaction fees and Floor QCC Orders, NDX and now NDXP despite the exclusions.

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<sup>20</sup> See pricing for RUT on CBOE’s Fees Schedule.

<sup>21</sup> QQQ is an exchange-traded fund based on the Nasdaq-100 Index<sup>®</sup>.

<sup>22</sup> QQQ options overlies the same Index as NDX, namely the Nasdaq 100<sup>®</sup> Index. This relationship between QQQ options and NDX options is similar to the relationship between RUT, the iShares Russell 2000 Index, and IWM which is the ETF on RUT.

The Exchange's proposal to exclude NDXP from the Monthly Market Maker Cap and the Monthly Firm Fee Cap is equitable and not unfairly discriminatory because no market participant would be eligible to count NDXP toward either the Monthly Market Maker Cap or the Monthly Firm Fee Cap.

The Exchange's proposal to exclude NDXP from the Firm Floor Options Transaction waivers for members executing facilitation orders pursuant to Exchange Rule 1064,<sup>23</sup> from the buy side of a transaction, if the same member or its affiliates under Common Ownership represent both sides of a Firm transaction when such members are trading in their own proprietary account, and from the waiver for the Broker-Dealer Floor Options Transaction Charge for members executing facilitation orders pursuant to Exchange Rule 1064,<sup>24</sup> is reasonable because NDX, another proprietary product is likewise excluded today.

The Exchange's proposal to exclude NDXP from the Firm Floor Options Transaction waivers for members executing facilitation orders pursuant to Exchange Rule 1064,<sup>25</sup> from the buy side of a transaction, if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account, and from the waiver for the Broker-Dealer Floor Options Transaction Charge for members executing facilitation orders pursuant to

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<sup>23</sup> This waiver applies when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.

<sup>24</sup> Id.

<sup>25</sup> Id.

Exchange Rule 1064,<sup>26</sup> is equitable and not unfairly discriminatory because no market participant would be eligible to count NDXP toward these waivers.

#### Marketing Fee

The Exchange's proposal to exclude NDXP from the Marketing Fee is reasonable because NDXP is an exclusively listed product, similar to NDX, which is also excluded from the Marketing Fee. The Exchange notes that Specialists and Market Makers transaction fees will remain in line with other market participants for NDXP.

The Exchange's proposal to exclude NDXP from the Marketing Fee is equitable and not unfairly discriminatory because the Exchange will assess uniform transaction fees for all Non-Customers because the transaction charges, as proposed above, would otherwise be uniform for all market participants. The Exchange believes that assessing Customers no transaction fee for NDXP 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.

#### PIXL Pricing

The Exchange's proposal to exclude NDXP from Section IV.A. – PIXL Pricing and instead assess NDXP transactions in PIXL the Section II pricing, similar to NDX, is reasonable because the Exchange believes that the PIXL pricing continues to be

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<sup>26</sup>

Id.

competitive despite the exclusion of NDXP. The Exchange's proposal to exclude NDXP from the PIXL Pricing in Section IV, Part A and instead assess NDXP transactions in PIXL the Section II pricing is equitable and not unfairly discriminatory because the Exchange will uniformly exclude NDXP from PIXL pricing.

#### FLEX Transaction Fees

The Exchange's proposal to assess NDXP the same FLEX Transaction Fees as are assessed for NDX today is reasonable because the Exchange desires to assess the same fees for index products. The Exchange's proposal to assess NDXP the same FLEX Transaction Fees as are assessed for NDX today is equitable and not unfairly discriminatory because the Exchange will uniformly assess FLEX fees for NDXP in a uniform manner for all market participants.

#### Market Access and Routing Subsidy ("MARS")

The Exchange's proposal to exclude NDXP from Eligible Contracts for purposes of qualifying for a MARS Payment is reasonable because the Exchange believes that despite the exclusion of NDXP, MARS remains a competitive offering. The Exchange's proposal to exclude NDXP from Eligible Contracts for purposes of qualifying for a MARS Payment is equitable and not unfairly discriminatory because the Exchange will uniformly exclude NDXP from MARS.

#### 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. The Exchange notes that with its products, market participants are offered an opportunity to either transact NDXP or separately execute options overlying PowerShares QQQ Trust (“QQQ”). Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100 Index.<sup>27</sup>

#### Customer Rebate

The Exchange’s proposal to not pay the Customer Rebates in Section I of the Pricing Schedule on NDXP and count NDXP volume toward qualifying for a Customer Rebate Tier, similar to NDX, does not impose an undue burden on competition because the Exchange would apply its calculation to determine the eligibility and payment of Customer rebates in a uniform manner. The Exchange’s proposal to not pay Customer Rebates on NDXP in any Category is equitable and not unfairly discriminatory because the Exchange would not pay Customer Rebates on any transaction with NDXP to any market participant. Also, any market participant is eligible to earn a Customer Rebate.

#### Transaction Charges in Section II

The Exchange’s proposal to assess for the same electronic and floor Options Transaction Charges for NDXP and NDX does not impose an undue burden on competition because the Exchange would assess the same options transaction charges to all Non-Customer market participants. The Exchange believes that assessing Customers no transaction fee for NDXP does not impose an undue burden on competition because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing

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<sup>27</sup> See note 22 above.

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

The Exchange's proposal to add the words "per contract" to note 5 in Section II of the Pricing Schedule to make clear the surcharge is per contract does not impose an undue burden on competition because it will conform the language to the remainder of the transaction charges in Section II of the Pricing Schedule.

The Exchange's proposal to exclude NDXP from the Monthly Market Maker Cap and the Monthly Firm Fee Cap does not impose an undue burden on competition because no market participant would be eligible to count NDXP toward either the Monthly Market Maker Cap or the Monthly Firm Fee Cap.

The Exchange's proposal to exclude NDXP from the Firm Floor Options Transaction waivers for members executing facilitation orders pursuant to Exchange Rule 1064, from the buy side of a transaction, if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account, and from the waiver for the Broker-Dealer Floor Options Transaction Charge for members executing facilitation orders pursuant to Exchange Rule 1064, does not impose an undue burden on competition because no market participant would be eligible to count NDXP toward these waivers.

#### Marketing Fee

The Exchange's proposal to exclude NDXP from the Marketing Fee does not impose an undue burden on competition because the Exchange will assess uniform transaction fees for all Non-Customers because the transaction charges, as proposed

above, would otherwise be uniform for all market participants. The Exchange believes that assessing Customers no transaction fee for NDXP does not impose an undue burden on competition because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

#### PIXL Pricing

The Exchange's proposal to exclude NDXP from the PIXL Pricing in Section IV, Part A and instead assess NDXP transactions in PIXL the Section II pricing does not impose an undue burden on competition because the Exchange will uniformly exclude NDXP from PIXL pricing.

#### FLEX Transaction Fees

The Exchange's proposal to assess NDXP the same FLEX Transaction Fees as are assessed for NDX today does not impose an undue burden on competition because the Exchange will uniformly assess FLEX fees for NDXP in a uniform manner for all market participants.

#### MARS Subsidy

The Exchange's proposal to exclude NDXP from Eligible Contracts for purposes of qualifying for a MARS Payment does not impose an undue burden on competition because the Exchange will uniformly exclude NDXP from MARS.

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

No written comments were either solicited or received.

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

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

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

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-2018-02 on the subject line.

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

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-2018-02. 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-2018-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

Eduardo A. Aleman  
Assistant Secretary

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

**EXHIBIT 5**

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

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

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

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

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**B. Customer Rebate Program**

The Customer Rebate Tiers described below will be 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 will be paid on Customer Rebate Tiers according to the below 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.

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Customer Rebate Tiers	Percentage Thresholds of National Customer Volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options	Category	Category	Category	Category
		A	B	C	D

**(Monthly)**

Tier 1	0.00% - 0.60%	\$0.00	\$0.00	\$0.00	\$0.00
Tier 2	Above 0.60% - 1.10%	\$0.10*	\$0.10*	\$0.16* <sup>#</sup>	\$0.21* <sup>#</sup>
Tier 3	Above 1.10% - 1.60%	\$0.15	\$0.12*	\$0.18* <sup>#</sup>	\$0.22* <sup>#</sup>
Tier 4	Above 1.60% - 2.50%	\$0.20	\$0.16	\$0.22 <sup>#</sup>	\$0.26 <sup>#</sup>
Tier 5	Above 2.50%	\$0.21	\$0.17	\$0.22 <sup>#</sup>	\$0.27 <sup>#</sup>

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Category A: Rebate will be paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols.

Category B: Rebate will be paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order will be paid a rebate of \$0.14 per contract. Rebates on Customer PIXL Orders will be capped at 4,000 contracts per order for Simple PIXL Orders.

Category C: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options in Section II symbols. Rebate will be paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will not be paid a rebate under any circumstances. The Category C Rebate will not be paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order.

Category D: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Non-Penny Pilot Options in Section II symbols. Rebate will be paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will not be paid a rebate under any circumstances. The Category D Rebate will not be paid when an electronically-delivered Customer Complex Order,



including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order.

Rebates will not be paid on NDX or NDXP contracts in any Category, however NDX and NDXP contracts will count toward the volume requirement to qualify for a Customer Rebate Tier.

\*The Exchange will pay a \$0.02 per contract Category A and B rebate and a \$0.03 per contract Category C and D rebate in addition to the applicable Tier 2 and 3 rebate, provided the Specialist, Market Maker or Appointed MM has reached the Monthly Market Maker Cap as defined in Section II, to: (1) a Specialist or Market Maker who is not under Common Ownership or is not a party of an Affiliated Entity; or (2) an OFP member or member organization affiliate under Common Ownership; or (3) an Appointed OFP of an Affiliated Entity.

#The Exchange will pay a \$0.05 per contract Category C and D rebate in addition to the applicable Tier 2, 3, 4 and 5 rebates to members or member organizations or member or member organization affiliated under Common Ownership provided the member or member organization qualified for any MARS Payments in Section IV, Part E.

\* \* \* \* \*

**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)<sup>6</sup></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)<sup>7</sup>, excluding <u>NDX</u> and <u>NDXP</u></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

<b>Options Transactions Charge NDX and NDXP<sup>5</sup></b>	\$0.00	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75
<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 \$0.45.

<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 NDXP, a surcharge of \$0.25 per contract will be assessed to Non-Customers.

<sup>6</sup>A \$0.03 per contract surcharge will be assessed to electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Penny Pilot Options (excluding SPY). An 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.

<sup>7</sup>A \$0.10 per contract surcharge will be assessed to electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Pilot Options (excluding NDX and NDXP). An 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.

- The Cabinet Fees above are not in addition to the Options Transaction Charges.
- QCC Transaction Fees for a Specialist, Market Maker, Firm and Broker-Dealer are \$0.20 per contract. Customers and Professionals are not assessed a QCC Transaction Fee. QCC Transaction Fees apply to QCC Orders, as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e). A rebate, as specified in the below QCC Rebate Schedule, will be paid for all qualifying executed QCC Orders, as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e), except where the transaction is either: (i) Customer-to- Customer; (ii) Customer-to-Professional, (iii) Professional-to-Professional or (iv) a dividend, merger, short stock interest or reversal or conversion strategy execution (as defined in Section II).

#### QCC Rebate Schedule

<b>Tier</b>	<b>Threshold</b>	<b>Rebate per Contract</b>
Tier 1	0 to 99,999 contracts in a month	\$0.00
Tier 2	100,000 to 299,999 contracts in a month	\$0.05
Tier 3	300,000 to 499,999 contracts in a month	\$0.07
Tier 4	500,000 to 699,999 contracts in a month	\$0.08
Tier 5	700,000 to 999,999 contracts in a month	\$0.09
Tier 6	Over 1,000,000 contracts in a month	\$0.11

The maximum QCC Rebate to be paid in a given month will not exceed \$550,000.

- Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying NDX and NDXP; and (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)). The trading activity of separate Specialist and Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Section II) will be excluded from the Monthly Market Maker Cap. Specialists or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows:

#### **Fee per contract**

\$0.05 per contract Fee for Adding Liquidity in Penny Pilot Options

\$0.18 per contract Fee for Removing Liquidity in Penny Pilot Options

\$0.18 per contract in Non-Penny Pilot Options

\$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction ("COLA"). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

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

- The Firm Floor Options Transaction Charges will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month. NDX and NDXP Options Transactions will be excluded from each of the waivers set forth in the above paragraph.

\* \* \* \* \*

### **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 or NDXP.

\* \* \* \* \*

#### **IV. Other Transaction Fees**

##### **A. PIXL Pricing\***

\* Options overlying NDX and NDXP are not subject to Section IV., A. PIXL Pricing. NDX and NDXP transactions in PIXL will be subject to Section II pricing.

\* \* \* \* \*

##### **B. FLEX Transaction Fees**

\* \* \* \* \*

- The Monthly Firm Fee Cap, Monthly Market Maker Cap, Strategy Caps and the Options Surcharge in BKX, [and] NDX and NDXP described in Section II will apply to this Section IV, B. No other fees described in Section II will apply to this Section IV.B.

\* \* \* \* \*

##### **E. Market Access and Routing Subsidy (“MARS”)**

###### **MARS System Eligibility**

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

incorporates the features described above and satisfies Phlx that it appears to be robust and reliable. The member remains solely responsible for implementing and operating its system.

### **MARS Eligible Contracts**

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

\* \* \* \* \*