

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 36	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2021 - * 12	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"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
Description				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="A proposal to amend Phlx Pricing Schedule at Options 7, Section 3"/>				
Contact Information				
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.				
First Name *	<input type="text" value="Angela"/>	Last Name *	<input type="text" value="Dunn"/>	
Title *	<input type="text" value="Principal Associate General Counsel"/>			
E-mail *	<input type="text" value="angela.dunn@nasdaq.com"/>			
Telephone *	<input type="text" value="(215) 496-5692"/>	Fax	<input type="text"/>	
Signature				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	<input type="text" value="03/01/2021"/>	<input type="text" value="EVP and Chief Legal Officer"/>		
By	<input type="text" value="/s/ John Zecca"/>	<input type="text"/>		
(Name *)				
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				
<input type="button" value="john.zecca@nasdaq.com"/>				

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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Phlx’s Pricing Schedule at Options 7, Section 3, “Rebates and Fees for Adding and Removing Liquidity in SPY.”

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 November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

Phlx proposes to amend its pricing within Options 7, Section 3, "Rebates and Fees for Adding and Removing Liquidity in SPY." Specifically, the Exchange proposes to amend Options 7, Section 3, Part A, Simple Orders to: (1) decrease the SPY Simple Order Customer Fee for Removing Liquidity; and (2) amend the SPY Lead Market Maker and Market Maker tier qualifications to earn a Simple Order Rebate for Adding Liquidity. Each change will be described below.

Fee for Removing Liquidity

The Exchange proposes to decrease the current \$0.42 per contract Customer Fee for Removing Liquidity in SPY to \$0.38 per contract for Simple Orders. The Exchange believes decreasing this fee will incentivize market participants to send additional Customer Simple Orders to Phlx in SPY.

The Exchange is not amending any other Fees for Removing Liquidity³ in SPY for Simple Orders. Customers will continue to pay the lowest Simple Order Fee for Removing Liquidity in SPY.

Rebate for Adding Liquidity

Today, Lead Market Makers and Market Makers are paid Simple Order Rebates for Adding Liquidity on electronically executed Simple Order contracts per day in a month when adding liquidity in SPY. The Simple Order Rebate for Adding Liquidity is determined by calculating the average daily volume of electronically executed Lead

³ Today, all non-Customers pay a \$0.48 per contract Fee for Removing Liquidity in SPY.

Market Maker and Market Maker Simple Order contracts per day in a month in SPY.⁴

Today, the applicable tier schedule is as follows:

Tiers	Average Daily Volume “ADV”	Rebate for Adding Liquidity
1	1 to 2,499	\$0.12
2	2,500 to 4,999	\$0.15
3	5,000 to 19,999	\$0.18
4	20,000 to 34,999	\$0.24
5	35,000 to 49,999	\$0.27
6	greater than 49,999	\$0.32

The Exchange proposes to amend the current tier schedule. Instead of utilizing average daily volume to qualify for a Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity when adding liquidity in SPY, the Exchange proposes to utilize a percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products (“TCV”). Simple Order Rebates to Add Liquidity will continue to be paid on electronically executed Lead Market Maker and Market Maker Simple Order contracts per day in a month which add liquidity in SPY. The Exchange is not amending the Rebates for Adding Liquidity that are paid to Lead Market Makers and Market Makers for transacting Simple Orders in SPY. Lead Market Makers and Market Makers will be paid per the highest tier achieved pursuant to the below tier schedule:

Tiers	Adds liquidity in SPY as a percentage of TCV	Rebate for Adding Liquidity
1	up to 0.02%	\$0.12
2	up to 0.04%	\$0.15
3	up to 0.10%	\$0.18

⁴ This would include Lead Market Maker or Market Maker quotes or orders that were executed.

Tiers	Adds liquidity in SPY as a percentage of TCV	Rebate for Adding Liquidity
4	up to 0.20%	\$0.24
5	up to 0.40%	\$0.27
6	greater than 0.40%	\$0.32

Specifically, the Exchange would pay a \$0.12 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.02%⁵ which adds in SPY. Today, the Exchange pays a \$0.12 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume up to 2,499 contracts per day in a month which add liquidity in SPY.

The Exchange proposes to pay a \$0.15 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.04%⁶ which adds liquidity in SPY. Today, the Exchange pays a \$0.15 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume from 2,500 to 4,999 contracts per day in a month which adds liquidity in SPY.

The Exchange proposes to pay a \$0.18 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.10%⁷ which adds liquidity in SPY. Today, the Exchange pays a \$0.18 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume from 5,000 to 19,999 contracts per day in a month which adds liquidity in SPY.

⁵ 0.02% TCV is representative of approximately 5,000 contracts per day when TCV is 25,000,000 contracts per day.

⁶ 0.04% TCV is representative of approximately 10,000 contracts per day when TCV is 25,000,000 contracts per day.

⁷ 0.10% TCV is representative of approximately 25,000 contracts per day when TCV is 25,000,000 contracts per day.

The Exchange proposes to pay a \$0.24 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.20%⁸ which adds liquidity in SPY. Today, the Exchange pays a \$0.24 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume from 20,000 to 34,999 contracts per day in a month which adds liquidity in SPY.

The Exchange proposes to pay a \$0.27 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.40%⁹ which adds liquidity in SPY. Today, the Exchange pays a \$0.27 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume from 35,000 to 49,999 contracts per day in a month which adds liquidity in SPY.

The Exchange proposes to pay a \$0.32 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV greater than 0.40% which adds liquidity in SPY. Today, the Exchange pays a \$0.32 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume greater than 49,999 contracts per day in a month which adds liquidity in SPY.

As proposed, Lead Market Maker and Market Maker Simple Order Rebates to Add Liquidity in SPY would require an increased amount of electronically executed Lead Market Maker and Market Maker Simple Order contracts per day in a month which adds liquidity in SPY to qualify for the same tiers as members qualified in the past. For example, with this proposal, the Tier 1 Simple Order Rebate to Add Liquidity will

⁸ 0.20% TCV is representative of approximately 50,000 contracts per day when TCV is 25,000,000 contracts per day.

⁹ 0.40% TCV is representative of approximately 100,000 contracts per day when TCV is 25,000,000 contracts per day.

continue to pay a \$0.12 per contract Simple Order Lead Market Maker and Market Maker Rebates to Add Liquidity in SPY, however instead of executing contracts which adds liquidity from 1 to 2,499 ADV to qualify for a Tier 1 rebate, a Participant that executes from 1 to approximately 5,000 contracts in a day (which is the percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products or “TCV”), which adds liquidity, would now qualify for the Tier 1 \$0.12 Simple Order Lead Market Maker and Market Maker Rebate to Add Liquidity in SPY. Today, Participants that execute 2,500 to 4,999 ADV of Simple Order Lead Market Maker and Market Maker contracts, which adds liquidity, would qualify for the Tier 2 Simple Order Lead Market Maker and Market Maker Rebate to Add Liquidity in SPY which pays \$0.15 per contract. With this proposal, those Participants that previously qualified for the Tier 2 rebate would now qualify for the Tier 1 Simple Order Lead Market Maker and Market Maker Rebate to Add Liquidity. Likewise, with this proposal the Tier 2 Simple Order Rebate to Add Liquidity will continue to pay a \$0.15 per contract Simple Order Lead Market Maker and Market Maker Rebate to Add Liquidity in SPY, however instead of executing contracts from 2,500 to 4,999 ADV, which adds liquidity, to qualify for a Tier 2 rebate, a Participant that executes up to approximately 10,000 contracts TCV in a day, which adds liquidity, would now qualify for the Tier 2 Simple Order Lead Market Maker and Market Maker Rebate to Add Liquidity which pays \$0.15 per contract. Today, Participants who executed 5,000 to 19,999 ADV qualify for the higher Tier 3 Simple Order Lead Market Maker and Market Maker Rebate to Add Liquidity of \$0.18 per contract. Each tier requirement has been increased and therefore Participants in Tiers 2-6 would have to execute a greater amount

of Simple Order Lead Market Maker and Market Maker contracts which adds liquidity in SPY to earn the same rebate as they previously earned.

With this proposal, all Simple Order Rebate to Add Liquidity tiers require a greater amount of executed contracts which add liquidity in SPY to qualify for the same tier, except for those Participants that today qualify for Tier 1.¹⁰ Phlx believes its proposal will continue to incentivize the submission of Lead Market Maker and Market Maker Simple Orders by continuing to offer rebates for the submission of these orders which add liquidity in SPY. Today, the Exchange only pays Simple Order Rebates to Add Liquidity in SPY for Lead Market Maker and Market Maker Simple Orders which add liquidity in SPY and this will remain the case.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² 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 Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain

¹⁰ Tier 1 continues to pay the same \$0.12 per contract Simple Order Lead Market Maker and Market Maker Rebate to Add Liquidity for Participants who submit up to approximately 5,000 TCV contracts which add liquidity in SPY.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[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’”¹³

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.”¹⁴

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market

¹³ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹⁴ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Fee for Removing Liquidity

The Exchange's proposal to decrease the current \$0.42 per contract Customer Fee for Removing Liquidity in SPY to \$0.38 per contract for Simple Orders is reasonable. Decreasing the Simple Order Customer Fee for Removing Liquidity in SPY will incentivize market participants to send additional Customer SPY Simple Orders to Phlx. Customers will continue to pay the lowest Simple Order Fee for Removing Liquidity in SPY as compared to other market participants.¹⁵

The Exchange's proposal to decrease the current \$0.42 per contract Customer Fee for Removing Liquidity in SPY to \$0.38 per contract for Simple Orders is equitable and not unfairly discriminatory. Customers would continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants.

Rebate for Adding Liquidity

The Exchange's proposal to amend the current tier schedule to remove average

¹⁵ See note 3 above.

daily volume as a tier qualifier for a Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity when adding liquidity in SPY and instead utilize a percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products or “TCV” is reasonable, equitable and not unfairly discriminatory. The Exchange’s proposal is intended to provide a measure for the amount of contracts that would be eligible to qualify a market participant submitting electronically executed Lead Market Maker and Market Maker Simple Order contracts per day in a month which add liquidity in SPY for a certain rebate. The greater the amount of contracts submitted by the member, the larger the Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity when adding liquidity in SPY. The Exchange believes that measuring the contracts as a percentage of TCV is a fair and equitable method for calculating Simple Order Customer volume executed on Phlx when adding liquidity in SPY. The Exchange would uniformly apply this measure to all eligible members to determine the corresponding rebate. Lead Market Makers and Market Makers will be paid per the highest tier achieved.

The Exchange’s proposal to amend the tier qualifications for Lead Market Maker or Market Maker Simple Order Rebates to Add Liquidity when adding liquidity in SPY is reasonable.¹⁶ As proposed, an increased amount of electronically executed Lead Market

¹⁶ With this proposal, Phlx would pay a \$0.12 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.02% which adds liquidity in SPY. Today, the Exchange pays a \$0.12 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume up to 2,499 contracts per day in a month which adds liquidity in SPY. The Exchange proposes to pay a \$0.15 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.04% which adds liquidity in SPY. Today, the Exchange pays a \$0.15 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add

Maker and Market Maker Simple Order contracts per day in a month which add liquidity in SPY would need to be submitted to qualify for the same tiers as members qualified in the past with the exception of Tier 1.¹⁷ With this proposal, all Simple Order Rebate to Add Liquidity tiers require a greater amount of executed contracts which add liquidity in SPY to qualify for the same rebate as the Participant had previously qualified for prior to this proposal. Despite the increased volume qualifications, Phlx believes its proposal will continue to incentivize the submission of Lead Market Maker and Market Maker Simple Orders by continuing to offer rebates for the submission of these orders which add liquidity in SPY. Today, the Exchange only pays Simple Order Rebates to Add Liquidity

Liquidity for average daily volume from 2,500 to 4,999 contracts per day in a month which adds liquidity in SPY. The Exchange proposes to pay a \$0.18 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.10% which adds in SPY. Today, the Exchange pays a \$0.18 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume from 5,000 to 19,999 contracts per day in a month which adds liquidity in SPY. The Exchange proposes to pay a \$0.24 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.20% which adds liquidity in SPY. Today, the Exchange pays a \$0.24 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume from 20,000 to 34,999 contracts per day in a month which adds liquidity in SPY. The Exchange proposes to pay a \$0.27 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.40% which adds liquidity in SPY. Today, the Exchange pays a \$0.27 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume from 35,000 to 49,999 contracts per day in a month which adds liquidity in SPY.

The Exchange proposes to pay a \$0.32 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV greater than 0.40% which adds liquidity in SPY. Today, the Exchange pays a \$0.32 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume greater than 49,999 contracts per day in a month which adds liquidity in SPY.

¹⁷ Tier 1 continues to pay the same \$0.12 per contract Simple Order Lead Market Maker and Market Maker Rebate to Add Liquidity for Participants who submit up to approximately 5,000 TCV contracts which add liquidity in SPY.

in SPY for Lead Market Maker and Market Maker Simple Orders and this will remain the case. Lead Market Makers and Market Makers will be paid per the highest tier achieved.

The Exchange's proposal to amend the tier qualifications for Lead Market Maker or Market Maker Simple Order Rebates to Add Liquidity in SPY is equitable and not unfairly discriminatory. Phlx Lead Market Makers and Market Makers add value through continuous quoting¹⁸ and are subject to additional requirements and obligations¹⁹ that other market participants are not. Incentivizing Lead Market Makers and Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

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.

Inter-market Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. 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

¹⁸ See Options 2, Section 5.

¹⁹ See Options 2, Section 4.

other exchanges 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.

Intra-market Competition

Fee for Removing Liquidity

The Exchange's proposal to decrease the current \$0.42 per contract Customer Fee for Removing Liquidity in SPY to \$0.38 per contract for Simple Orders does not impose an undue burden on competition. Customers would continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants.

Rebate for Adding Liquidity

The Exchange's proposal to amend the current tier schedule to remove average daily volume as a tier qualifier for a Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity when adding liquidity in SPY and instead utilize a percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products or "TCV" does not impose an undue burden on competition. The Exchange's proposal is intended to provide a measure for

the amount of contracts that would be eligible to qualify a market participant submitting electronically executed Lead Market Maker and Market Maker Simple Order contracts per day in a month which add liquidity in SPY for a certain rebate. The greater the amount of contracts submitted by the member, the larger the Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity in SPY. The Exchange believes that measuring the contracts as a percentage of TCV is a fair and equitable method for calculating Customer volume executed on Phlx when adding liquidity in SPY. The Exchange would uniformly apply this measure to all eligible members to determine the corresponding rebate. Lead Market Makers and Market Makers will be paid per the highest tier achieved.

The Exchange's proposal to amend the tier qualifications for Lead Market Maker or Market Maker Simple Order Rebates to Add Liquidity in SPY does not impose an undue burden on competition. Phlx Lead Market Makers and Market Makers add value through continuous quoting²⁰ and are subject to additional requirements and obligations²¹ that other market participants are not. Incentivizing Lead Market Makers and Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

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.

²⁰ See Options 2, Section 5.

²¹ See Options 2, Section 4.

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,²² 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.

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.

²² 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2021-12)

March __, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Proposed Rule Change to Amend Options 7, Section 3, “Rebates and Fees for Adding and Removing Liquidity in SPY.”

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 March 1, 2021, 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 Phlx’s Pricing Schedule at Options 7, Section 3, “Rebates and Fees for Adding and Removing Liquidity in SPY.”

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Phlx proposes to amend its pricing within Options 7, Section 3, "Rebates and Fees for Adding and Removing Liquidity in SPY." Specifically, the Exchange proposes to amend Options 7, Section 3, Part A, Simple Orders to: (1) decrease the SPY Simple Order Customer Fee for Removing Liquidity; and (2) amend the SPY Lead Market Maker and Market Maker tier qualifications to earn a Simple Order Rebate for Adding Liquidity. Each change will be described below.

Fee for Removing Liquidity

The Exchange proposes to decrease the current \$0.42 per contract Customer Fee for Removing Liquidity in SPY to \$0.38 per contract for Simple Orders. The Exchange believes decreasing this fee will incentivize market participants to send additional Customer Simple Orders to Phlx in SPY.

The Exchange is not amending any other Fees for Removing Liquidity³ in SPY for Simple Orders. Customers will continue to pay the lowest Simple Order Fee for Removing Liquidity in SPY.

Rebate for Adding Liquidity

Today, Lead Market Makers and Market Makers are paid Simple Order Rebates

³ Today, all non-Customers pay a \$0.48 per contract Fee for Removing Liquidity in SPY.

for Adding Liquidity on electronically executed Simple Order contracts per day in a month when adding liquidity in SPY. The Simple Order Rebate for Adding Liquidity is determined by calculating the average daily volume of electronically executed Lead Market Maker and Market Maker Simple Order contracts per day in a month in SPY.⁴

Today, the applicable tier schedule is as follows:

Tiers	Average Daily Volume “ADV”	Rebate for Adding Liquidity
1	1 to 2,499	\$0.12
2	2,500 to 4,999	\$0.15
3	5,000 to 19,999	\$0.18
4	20,000 to 34,999	\$0.24
5	35,000 to 49,999	\$0.27
6	greater than 49,999	\$0.32

The Exchange proposes to amend the current tier schedule. Instead of utilizing average daily volume to qualify for a Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity when adding liquidity in SPY, the Exchange proposes to utilize a percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products (“TCV”). Simple Order Rebates to Add Liquidity will continue to be paid on electronically executed Lead Market Maker and Market Maker Simple Order contracts per day in a month which add liquidity in SPY. The Exchange is not amending the Rebates for Adding Liquidity that are paid to Lead Market Makers and Market Makers for transacting Simple Orders in SPY. Lead Market Makers and Market Makers will be paid per the highest tier achieved pursuant to the below tier schedule:

⁴ This would include Lead Market Maker or Market Maker quotes or orders that were executed.

Tiers	Adds liquidity in SPY as a percentage of TCV	Rebate for Adding Liquidity
1	up to 0.02%	\$0.12
2	up to 0.04%	\$0.15
3	up to 0.10%	\$0.18
4	up to 0.20%	\$0.24
5	up to 0.40%	\$0.27
6	greater than 0.40%	\$0.32

Specifically, the Exchange would pay a \$0.12 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.02%⁵ which adds in SPY. Today, the Exchange pays a \$0.12 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume up to 2,499 contracts per day in a month which add liquidity in SPY.

The Exchange proposes to pay a \$0.15 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.04%⁶ which adds liquidity in SPY. Today, the Exchange pays a \$0.15 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume from 2,500 to 4,999 contracts per day in a month which adds liquidity in SPY.

The Exchange proposes to pay a \$0.18 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.10%⁷ which adds liquidity in SPY. Today, the Exchange pays a \$0.18 per contract Lead Market Maker or Market

⁵ 0.02% TCV is representative of approximately 5,000 contracts per day when TCV is 25,000,000 contracts per day.

⁶ 0.04% TCV is representative of approximately 10,000 contracts per day when TCV is 25,000,000 contracts per day.

⁷ 0.10% TCV is representative of approximately 25,000 contracts per day when TCV is 25,000,000 contracts per day.

Maker Simple Order Rebate to Add Liquidity for average daily volume from 5,000 to 19,999 contracts per day in a month which adds liquidity in SPY.

The Exchange proposes to pay a \$0.24 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.20%⁸ which adds liquidity in SPY. Today, the Exchange pays a \$0.24 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume from 20,000 to 34,999 contracts per day in a month which adds liquidity in SPY.

The Exchange proposes to pay a \$0.27 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.40%⁹ which adds liquidity in SPY. Today, the Exchange pays a \$0.27 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume from 35,000 to 49,999 contracts per day in a month which adds liquidity in SPY.

The Exchange proposes to pay a \$0.32 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV greater than 0.40% which adds liquidity in SPY. Today, the Exchange pays a \$0.32 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume greater than 49,999 contracts per day in a month which adds liquidity in SPY.

As proposed, Lead Market Maker and Market Maker Simple Order Rebates to Add Liquidity in SPY would require an increased amount of electronically executed Lead Market Maker and Market Maker Simple Order contracts per day in a month which adds

⁸ 0.20% TCV is representative of approximately 50,000 contracts per day when TCV is 25,000,000 contracts per day.

⁹ 0.40% TCV is representative of approximately 100,000 contracts per day when TCV is 25,000,000 contracts per day.

liquidity in SPY to qualify for the same tiers as members qualified in the past. For example, with this proposal, the Tier 1 Simple Order Rebate to Add Liquidity will continue to pay a \$0.12 per contract Simple Order Lead Market Maker and Market Maker Rebates to Add Liquidity in SPY, however instead of executing contracts which adds liquidity from 1 to 2,499 ADV to qualify for a Tier 1 rebate, a Participant that executes from 1 to approximately 5,000 contracts in a day (which is the percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products or “TCV”), which adds liquidity, would now qualify for the Tier 1 \$0.12 Simple Order Lead Market Maker and Market Maker Rebate to Add Liquidity in SPY. Today, Participants that execute 2,500 to 4,999 ADV of Simple Order Lead Market Maker and Market Maker contracts, which adds liquidity, would qualify for the Tier 2 Simple Order Lead Market Maker and Market Maker Rebate to Add Liquidity in SPY which pays \$0.15 per contract. With this proposal, those Participants that previously qualified for the Tier 2 rebate would now qualify for the Tier 1 Simple Order Lead Market Maker and Market Maker Rebate to Add Liquidity. Likewise, with this proposal the Tier 2 Simple Order Rebate to Add Liquidity will continue to pay a \$0.15 per contract Simple Order Lead Market Maker and Market Maker Rebate to Add Liquidity in SPY, however instead of executing contracts from 2,500 to 4,999 ADV, which adds liquidity, to qualify for a Tier 2 rebate, a Participant that executes up to approximately 10,000 contracts TCV in a day, which adds liquidity, would now qualify for the Tier 2 Simple Order Lead Market Maker and Market Maker Rebate to Add Liquidity which pays \$0.15 per contract. Today, Participants who executed 5,000 to 19,999 ADV qualify for the higher Tier 3 Simple Order Lead Market Maker and Market

Maker Rebate to Add Liquidity of \$0.18 per contract. Each tier requirement has been increased and therefore Participants in Tiers 2-6 would have to execute a greater amount of Simple Order Lead Market Maker and Market Maker contracts which adds liquidity in SPY to earn the same rebate as they previously earned.

With this proposal, all Simple Order Rebate to Add Liquidity tiers require a greater amount of executed contracts which add liquidity in SPY to qualify for the same tier, except for those Participants that today qualify for Tier 1.¹⁰ Phlx believes its proposal will continue to incentivize the submission of Lead Market Maker and Market Maker Simple Orders by continuing to offer rebates for the submission of these orders which add liquidity in SPY. Today, the Exchange only pays Simple Order Rebates to Add Liquidity in SPY for Lead Market Maker and Market Maker Simple Orders which add liquidity in SPY and this will remain the case.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² 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.

¹⁰ Tier 1 continues to pay the same \$0.12 per contract Simple Order Lead Market Maker and Market Maker Rebate to Add Liquidity for Participants who submit up to approximately 5,000 TCV contracts which add liquidity in SPY.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[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’”¹³

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.”¹⁴

Numerous indicia demonstrate the competitive nature of this market. For

¹³ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹⁴ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Fee for Removing Liquidity

The Exchange's proposal to decrease the current \$0.42 per contract Customer Fee for Removing Liquidity in SPY to \$0.38 per contract for Simple Orders is reasonable. Decreasing the Simple Order Customer Fee for Removing Liquidity in SPY will incentivize market participants to send additional Customer SPY Simple Orders to Phlx. Customers will continue to pay the lowest Simple Order Fee for Removing Liquidity in SPY as compared to other market participants.¹⁵

The Exchange's proposal to decrease the current \$0.42 per contract Customer Fee for Removing Liquidity in SPY to \$0.38 per contract for Simple Orders is equitable and not unfairly discriminatory. Customers would continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in

¹⁵ See note 3 above.

response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants.

Rebate for Adding Liquidity

The Exchange's proposal to amend the current tier schedule to remove average daily volume as a tier qualifier for a Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity when adding liquidity in SPY and instead utilize a percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products or "TCV" is reasonable, equitable and not unfairly discriminatory. The Exchange's proposal is intended to provide a measure for the amount of contracts that would be eligible to qualify a market participant submitting electronically executed Lead Market Maker and Market Maker Simple Order contracts per day in a month which add liquidity in SPY for a certain rebate. The greater the amount of contracts submitted by the member, the larger the Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity when adding liquidity in SPY. The Exchange believes that measuring the contracts as a percentage of TCV is a fair and equitable method for calculating Simple Order Customer volume executed on Phlx when adding liquidity in SPY. The Exchange would uniformly apply this measure to all eligible members to determine the corresponding rebate. Lead Market Makers and Market Makers will be paid per the highest tier achieved.

The Exchange's proposal to amend the tier qualifications for Lead Market Maker or Market Maker Simple Order Rebates to Add Liquidity when adding liquidity in SPY is reasonable.¹⁶ As proposed, an increased amount of electronically executed Lead Market

¹⁶ With this proposal, Phlx would pay a \$0.12 per contract Lead Market Maker or

Maker and Market Maker Simple Order contracts per day in a month which add liquidity in SPY would need to be submitted to qualify for the same tiers as members qualified in the past with the exception of Tier 1.¹⁷ With this proposal, all Simple Order Rebate to Add Liquidity tiers require a greater amount of executed contracts which add liquidity in SPY to qualify for the same rebate as the Participant had previously qualified for prior to

Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.02% which adds liquidity in SPY. Today, the Exchange pays a \$0.12 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume up to 2,499 contracts per day in a month which adds liquidity in SPY. The Exchange proposes to pay a \$0.15 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.04% which adds liquidity in SPY. Today, the Exchange pays a \$0.15 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume from 2,500 to 4,999 contracts per day in a month which adds liquidity in SPY. The Exchange proposes to pay a \$0.18 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.10% which adds in SPY. Today, the Exchange pays a \$0.18 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume from 5,000 to 19,999 contracts per day in a month which adds liquidity in SPY. The Exchange proposes to pay a \$0.24 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.20% which adds liquidity in SPY. Today, the Exchange pays a \$0.24 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume from 20,000 to 34,999 contracts per day in a month which adds liquidity in SPY. The Exchange proposes to pay a \$0.27 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV up to 0.40% which adds liquidity in SPY. Today, the Exchange pays a \$0.27 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume from 35,000 to 49,999 contracts per day in a month which adds liquidity in SPY.

The Exchange proposes to pay a \$0.32 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for TCV greater than 0.40% which adds liquidity in SPY. Today, the Exchange pays a \$0.32 per contract Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity for average daily volume greater than 49,999 contracts per day in a month which adds liquidity in SPY.

¹⁷ Tier 1 continues to pay the same \$0.12 per contract Simple Order Lead Market Maker and Market Maker Rebate to Add Liquidity for Participants who submit up to approximately 5,000 TCV contracts which add liquidity in SPY.

this proposal. Despite the increased volume qualifications, Phlx believes its proposal will continue to incentivize the submission of Lead Market Maker and Market Maker Simple Orders by continuing to offer rebates for the submission of these orders which add liquidity in SPY. Today, the Exchange only pays Simple Order Rebates to Add Liquidity in SPY for Lead Market Maker and Market Maker Simple Orders and this will remain the case. Lead Market Makers and Market Makers will be paid per the highest tier achieved.

The Exchange's proposal to amend the tier qualifications for Lead Market Maker or Market Maker Simple Order Rebates to Add Liquidity in SPY is equitable and not unfairly discriminatory. Phlx Lead Market Makers and Market Makers add value through continuous quoting¹⁸ and are subject to additional requirements and obligations¹⁹ that other market participants are not. Incentivizing Lead Market Makers and Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

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.

Inter-market Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange

¹⁸ See Options 2, Section 5.

¹⁹ See Options 2, Section 4.

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 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.

Intra-market Competition

Fee for Removing Liquidity

The Exchange's proposal to decrease the current \$0.42 per contract Customer Fee for Removing Liquidity in SPY to \$0.38 per contract for Simple Orders does not impose an undue burden on competition. Customers would continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants.

Rebate for Adding Liquidity

The Exchange's proposal to amend the current tier schedule to remove average daily volume as a tier qualifier for a Lead Market Maker or Market Maker Simple Order

Rebate to Add Liquidity when adding liquidity in SPY and instead utilize a percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products or “TCV” does not impose an undue burden on competition. The Exchange’s proposal is intended to provide a measure for the amount of contracts that would be eligible to qualify a market participant submitting electronically executed Lead Market Maker and Market Maker Simple Order contracts per day in a month which add liquidity in SPY for a certain rebate. The greater the amount of contracts submitted by the member, the larger the Lead Market Maker or Market Maker Simple Order Rebate to Add Liquidity in SPY. The Exchange believes that measuring the contracts as a percentage of TCV is a fair and equitable method for calculating Customer volume executed on Phlx when adding liquidity in SPY. The Exchange would uniformly apply this measure to all eligible members to determine the corresponding rebate. Lead Market Makers and Market Makers will be paid per the highest tier achieved.

The Exchange’s proposal to amend the tier qualifications for Lead Market Maker or Market Maker Simple Order Rebates to Add Liquidity in SPY does not impose an undue burden on competition. Phlx Lead Market Makers and Market Makers add value through continuous quoting²⁰ and are subject to additional requirements and obligations²¹ that other market participants are not. Incentivizing Lead Market Makers and Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

²⁰ See Options 2, Section 5.

²¹ See Options 2, Section 4.

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.²²

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. Please include File Number SR-Phlx-2021-12 on the subject line.

²² 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-2021-12. 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-2021-12 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.²³

J. Matthew DeLesDernier
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text underlined; deleted text in brackets.

NASDAQ PHLX LLC RULES

* * * * *

Options Rules

* * * * *

Options 7 Pricing Schedule

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Section 3. Rebates and Fees for Adding and Removing Liquidity in SPY

With respect to Section 3 of this Options 7 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	Lead Market Maker	Market Maker	Firm	Broker-Dealer	Professional
Rebate for Adding Liquidity	\$0.00	*	*	\$0.00	\$0.00	\$0.00
Fee for Removing Liquidity	\$0. [42] <u>38</u>	\$0.48	\$0.48	\$0.48	\$0.48	\$0.48

* The Simple Order Rebate for Adding Liquidity will be paid as noted below to Lead Market Makers and Market Makers adding liquidity in SPY. Specifically, a SPY Rebate for Adding Liquidity will be paid based on a percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products (“TCV”). Rebates will be paid on [the requisite amount of] electronically executed Lead Market Maker and Market Maker Simple Order contracts per day in a month in SPY.[:] Lead Market Makers and Market Makers will be paid per the highest tier achieved below.

Tiers	[Average Daily Volume “ADV”]<u>Adds liquidity in SPY as a percentage of TCV</u>	Rebate for Adding Liquidity
1	[1 to 2,499] <u>up to 0.02%</u>	\$0.12
2	[2,500 to 4,999] <u>up to 0.04%</u>	\$0.15
3	[5,000 to 19,999] <u>up to 0.10%</u>	\$0.18
4	[20,000 to 34,999] <u>up to 0.20%</u>	\$0.24
5	[35,000 to 49,999] <u>up to 0.40%</u>	\$0.27
6	greater than [49,999] <u>0.40%</u>	\$0.32

* * * * *