

Required fields are shown with yellow backgrounds and asterisks.

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

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<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) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

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

**Description**

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

A proposal to amend Phlx's Pricing Schedule at Options 7, Section 8, Membership Fees.

**Contact Information**

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

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

**Signature**

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

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

(Title \*)

Date 03/25/2021	EVP and Chief Legal Counsel
By John Zecca	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>
(Name *)	

john.zecca@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 \***

Add Remove View

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

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

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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**

Add Remove View

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

**Partial Amendment**

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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> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Phlx’s Pricing Schedule at Options 7, Section 8, “Membership Fees.”

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on April 1, 2021.

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

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

<sup>2</sup> 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 8, “Membership Fees” to (1) waive the Inactive Nominee Fee for a six month period; and (2) remove obsolete language. Each change is described below.

Options 7, Section 8

First, Phlx proposes to amend Options 7, Section 8, “Membership Fees,” at Part A, “Permit and Registration Fees,” to waive the Inactive Nominee<sup>3</sup> Fee which is a fee of \$600 for 6 months.<sup>4</sup> Phlx proposes to waive the Inactive Nominee Fee from April 1,

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<sup>3</sup> The term “inactive nominee” shall mean a natural person associated with and designated as such by a member organization and who has been approved for such status and is registered as such with the Membership Department. An inactive nominee shall have no rights or privileges under a permit unless and until said inactive nominee becomes admitted as a member of the Exchange pursuant to the By-Laws and Rules of the Exchange. An inactive nominee merely stands ready to exercise rights under a permit upon notice by the member organization to the Membership Department on an expedited basis. See Options 8, Section 2(a)(3). An Inactive Nominee shall be deemed a Clerk pursuant to Options 8, Section 12(a).

An inactive nominee’s status expires after six months unless it has been reaffirmed in writing by the member organization or is sooner terminated. A member organization is assessed the Inactive Nominee Fee every time the status is reaffirmed. An inactive nominee is also assessed Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in their inactive nominee status. However, an inactive nominee is not assessed Application and Initiation Fees if such inactive nominee applied for membership without any lapse in that individual’s association with a particular member organization. An Inactive Nominee is also assessed the Clerk Fee.

<sup>4</sup> The member organization is assessed \$100 per month for the applicable six month period unless the member organization provides proper notice of its intent to terminate an inactive nominee prior to the first day of the next billing month.

2021 through September 30, 2021. The Exchange notes that the Clerk Fee<sup>5</sup> of \$100 per month will continue to be assessed.

By way of background, on March 17, 2019,<sup>6</sup> Phlx suspended open outcry trading as a result of precautions taken with respect to COVID-19. When the Trading Floor reopened on June 3, 2020,<sup>7</sup> the Exchange permitted each Trading Floor member organization to be represented on the Trading Floor. However, due to the social distancing measures that were put in place to comply with Commonwealth of Pennsylvania health standards as well as Nasdaq's safety measures designed to prevent the spread of COVID-19, not all members and employees associated with a Phlx member organization were able to return to the Trading Floor. Certain floor members have utilized Inactive Nominees to staff the Trading Floor due to illness or other circumstances which necessitated a change in staff.

An Inactive Nominee allows a floor member to have additional flexibility in obtaining coverage on the trading floor. An Inactive Nominee stands ready to assume a membership upon notice by the member requesting that a specific permit be transferred intra-firm on an expedited and temporary basis. By way of example, an Inactive Nominee would be activated in the event of an emergency due to illness or other factors. An Inactive Nominee allows a member organization to have a full staff available to conduct business on the Exchange trading floor in the event of unplanned circumstances.

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<sup>5</sup> The Clerk Fee is imposed on any registered on-floor person employed by or associated with a member or member organization pursuant to Options 3, Section 19, including Inactive Nominees pursuant to Options 8, Section 7. The Clerk Fee is not imposed on permit holders. See Phlx Rules at Options 7, Section 8A.

<sup>6</sup> See Options Trader Alert #2020 – 07.

<sup>7</sup> See Options Trader Alert #2020 – 13.

At this time, with COVID-19 precautions still in place on Phlx's trading floor, the Exchange proposes this waiver to provide floor members with greater flexibility in registering Inactive Nominees to be activated in the event of illness or other factors without a fee. The Exchange believes that this waiver will enable floor members to plan staffing more efficiently in the upcoming months, including staffing needs during the summer, while the Trading Floor remains socially distanced. With this waiver, member organizations may choose to register Inactive Nominees so that they have back-ups available if they require coverage on the Trading Floor.

Second, Phlx proposes to remove the following obsolete rule text from Options 7, Section 8:

Phlx waives the Floor Lead Market Maker and Floor Market Maker Permit Fee, for the months of July and August 2020, provided a member or member organization (1) paid the Floor Lead Market Maker or Floor Market Maker Permit Fee in March 2020; and (2) was not otherwise registered as a Streaming Quote Trader or as a Remote Streaming Quote Trader in March 2020.

The above rule text is no longer relevant as the timeframe for which the waiver was in effect for certain fees has passed.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</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>8</sup> 15 U.S.C. 78f(b).

<sup>9</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>10</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>11</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>12</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>13</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>10</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>11</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>12</sup> See NetCoalition, at 534 - 535.

<sup>13</sup> Id. at 537.

otherwise, in the execution of order flow from broker dealers' ...."<sup>14</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.

Options 7, Section 8

Phlx's proposal to amend Options 7, Section 8, "Membership Fees," at Part A, "Permit and Registration Fees," to waive the Inactive Nominee Fee from April 1, 2021 through September 30, 2021 is reasonable. An Inactive Nominee allows a floor member to have additional flexibility in obtaining coverage on the trading floor. An Inactive Nominee stands ready to assume a membership upon notice by the member requesting that a specific permit be transferred intra-firm on an expedited and temporary basis. An Inactive Nominee allows a member organization to have a full staff available to conduct business on the Exchange trading floor in the event of unplanned circumstances. At this time, with COVID-19 precautions still in place on Phlx's trading floor, the Exchange proposes this waiver to provide floor members with greater flexibility in registering Inactive Nominees to be activated in the event of illness or other factors without a fee.

Phlx's proposal to amend Options 7, Section 8, "Membership Fees," at Part A, "Permit and Registration Fees," to waive the Inactive Nominee Fee from April 1, 2021 through September 30, 2021 is equitable and not unfairly discriminatory. All member organizations may register an Inactive Nominee and therefore take advantage of the fee waiver.

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<sup>14</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)).



The Exchange's proposal to remove obsolete rule text from Options 7, Section 8 is reasonable, equitable and not unfairly discriminatory. The rule text is no longer relevant as the timeframe for which the waiver was in effect for certain fees has passed.

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 inter-market 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 other exchanges. Because competitors are free to modify their own fees in response to a proposal, 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

Options 7, Section 8

Phlx's proposal to amend Options 7, Section 8, "Membership Fees," at Part A, "Permit and Registration Fees," to waive the Inactive Nominee Fee from April 1, 2021 through September 30, 2021 does not impose an undue burden on competition. All

member organizations may register an Inactive Nominee and therefore take advantage of the fee waiver.

The Exchange's proposal to remove obsolete rule text from Options 7, Section 8 does not impose an undue burden on competition. The rule text is no longer relevant as the timeframe for which the waiver was in effect for certain fees has passed.

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>15</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

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.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2021-19)

March \_\_, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s Pricing Schedule at Options 7, Section 8, “Membership Fees.”

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 25, 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 8, “Membership Fees.”

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on April 1, 2021.

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.

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

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

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

Phlx proposes to amend its pricing within Options 7, Section 8, “Membership Fees” to (1) waive the Inactive Nominee Fee for a six month period; and (2) remove obsolete language. Each change is described below.

Options 7, Section 8

First, Phlx proposes to amend Options 7, Section 8, “Membership Fees,” at Part A, “Permit and Registration Fees,” to waive the Inactive Nominee<sup>3</sup> Fee which is a fee of

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<sup>3</sup> The term “inactive nominee” shall mean a natural person associated with and designated as such by a member organization and who has been approved for such status and is registered as such with the Membership Department. An inactive nominee shall have no rights or privileges under a permit unless and until said inactive nominee becomes admitted as a member of the Exchange pursuant to the By-Laws and Rules of the Exchange. An inactive nominee merely stands ready to exercise rights under a permit upon notice by the member organization to the Membership Department on an expedited basis. See Options 8, Section 2(a)(3). An Inactive Nominee shall be deemed a Clerk pursuant to Options 8, Section 12(a).

An inactive nominee’s status expires after six months unless it has been reaffirmed in writing by the member organization or is sooner terminated. A member organization is assessed the Inactive Nominee Fee every time the status is reaffirmed. An inactive nominee is also assessed Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are

\$600 for 6 months.<sup>4</sup> Phlx proposes to waive the Inactive Nominee Fee from April 1, 2021 through September 30, 2021. The Exchange notes that the Clerk Fee<sup>5</sup> of \$100 per month will continue to be assessed.

By way of background, on March 17, 2019,<sup>6</sup> Phlx suspended open outcry trading as a result of precautions taken with respect to COVID-19. When the Trading Floor reopened on June 3, 2020,<sup>7</sup> the Exchange permitted each Trading Floor member organization to be represented on the Trading Floor. However, due to the social distancing measures that were put in place to comply with Commonwealth of Pennsylvania health standards as well as Nasdaq's safety measures designed to prevent the spread of COVID-19, not all members and employees associated with a Phlx member organization were able to return to the Trading Floor. Certain floor members have utilized Inactive Nominees to staff the Trading Floor due to illness or other circumstances which necessitated a change in staff.

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reassessed if there is a lapse in their inactive nominee status. However, an inactive nominee is not assessed Application and Initiation Fees if such inactive nominee applied for membership without any lapse in that individual's association with a particular member organization. An Inactive Nominee is also assessed the Clerk Fee.

<sup>4</sup> The member organization is assessed \$100 per month for the applicable six month period unless the member organization provides proper notice of its intent to terminate an inactive nominee prior to the first day of the next billing month.

<sup>5</sup> The Clerk Fee is imposed on any registered on-floor person employed by or associated with a member or member organization pursuant to Options 3, Section 19, including Inactive Nominees pursuant to Options 8, Section 7. The Clerk Fee is not imposed on permit holders. See Phlx Rules at Options 7, Section 8A.

<sup>6</sup> See Options Trader Alert #2020 – 07.

<sup>7</sup> See Options Trader Alert #2020 – 13.

An Inactive Nominee allows a floor member to have additional flexibility in obtaining coverage on the trading floor. An Inactive Nominee stands ready to assume a membership upon notice by the member requesting that a specific permit be transferred intra-firm on an expedited and temporary basis. By way of example, an Inactive Nominee would be activated in the event of an emergency due to illness or other factors. An Inactive Nominee allows a member organization to have a full staff available to conduct business on the Exchange trading floor in the event of unplanned circumstances.

At this time, with COVID-19 precautions still in place on Phlx's trading floor, the Exchange proposes this waiver to provide floor members with greater flexibility in registering Inactive Nominees to be activated in the event of illness or other factors without a fee. The Exchange believes that this waiver will enable floor members to plan staffing more efficiently in the upcoming months, including staffing needs during the summer, while the Trading Floor remains socially distanced. With this waiver, member organizations may choose to register Inactive Nominees so that they have back-ups available if they require coverage on the Trading Floor.

Second, Phlx proposes to remove the following obsolete rule text from Options 7, Section 8:

Phlx waives the Floor Lead Market Maker and Floor Market Maker Permit Fee, for the months of July and August 2020, provided a member or member organization (1) paid the Floor Lead Market Maker or Floor Market Maker Permit Fee in March 2020; and (2) was not otherwise registered as a Streaming Quote Trader or as a Remote Streaming Quote Trader in March 2020.

The above rule text is no longer relevant as the timeframe for which the waiver was in effect for certain fees has passed.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</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>10</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>11</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>12</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>11</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>12</sup> See NetCoalition, at 534 - 535.



play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>13</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>14</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.

#### Options 7, Section 8

Phlx’s proposal to amend Options 7, Section 8, “Membership Fees,” at Part A, “Permit and Registration Fees,” to waive the Inactive Nominee Fee from April 1, 2021 through September 30, 2021 is reasonable. An Inactive Nominee allows a floor member to have additional flexibility in obtaining coverage on the trading floor. An Inactive Nominee stands ready to assume a membership upon notice by the member requesting that a specific permit be transferred intra-firm on an expedited and temporary basis. An Inactive Nominee allows a member organization to have a full staff available to conduct business on the Exchange trading floor in the event of unplanned circumstances. At this time, with COVID-19 precautions still in place on Phlx’s trading floor, the Exchange

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<sup>13</sup> Id. at 537.

<sup>14</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)).

proposes this waiver to provide floor members with greater flexibility in registering Inactive Nominees to be activated in the event of illness or other factors without a fee.

Phlx's proposal to amend Options 7, Section 8, "Membership Fees," at Part A, "Permit and Registration Fees," to waive the Inactive Nominee Fee from April 1, 2021 through September 30, 2021 is equitable and not unfairly discriminatory. All member organizations may register an Inactive Nominee and therefore take advantage of the fee waiver.

The Exchange's proposal to remove obsolete rule text from Options 7, Section 8 is reasonable, equitable and not unfairly discriminatory. The rule text is no longer relevant as the timeframe for which the waiver was in effect for certain fees has passed.

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 inter-market 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 other exchanges. Because competitors are free to modify their own fees in response to a proposal, 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

Options 7, Section 8

Phlx's proposal to amend Options 7, Section 8, "Membership Fees," at Part A, "Permit and Registration Fees," to waive the Inactive Nominee Fee from April 1, 2021 through September 30, 2021 does not impose an undue burden on competition. All member organizations may register an Inactive Nominee and therefore take advantage of the fee waiver.

The Exchange's proposal to remove obsolete rule text from Options 7, Section 8 does not impose an undue burden on competition. The rule text is no longer relevant as the timeframe for which the waiver was in effect for certain fees has passed.

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>15</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

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

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-2021-19 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2021-19. 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-2021-19 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>16</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined; new text is underlined.*

**NASDAQ Phlx LLC Rules**

\* \* \* \* \*

**Options Rules**

\* \* \* \* \*

**Options 7 Pricing Schedule**

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**Section 8. Membership Fees**

**[Phlx waives the Floor Lead Market Maker and Floor Market Maker Permit Fee, for the months of July and August 2020, provided a member or member organization (1) paid the Floor Lead Market Maker or Floor Market Maker Permit Fee in March 2020; and (2) was not otherwise registered as a Streaming Quote Trader or as a Remote Streaming Quote Trader in March 2020.]**

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Initiation Fee	\$1,500
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**Phlx waives the Inactive Nominee Fee from April 1, 2021 through September 30, 2021.**

Inactive Nominee Fee	\$600 for 6 months
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The member organization will be assessed \$100 per month for the applicable six month period unless the member organization provides proper notice of its intent to terminate an inactive nominee prior to the first day of the next billing month.

An inactive nominee's status expires after six months unless it has been reaffirmed in writing by the member organization or is sooner terminated. A member organization will be assessed the Inactive Nominee Fee every time the status is reaffirmed. An inactive nominee is also assessed Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in their inactive nominee status. However, an inactive nominee would not be assessed Application and Initiation Fees if such inactive nominee applied for membership without any lapse in that individual's association with a particular member organization. An Inactive Nominee is also assessed the Clerk Fee.

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