

OMB APPROVAL	
OMB Number:	3235-0045
Estimated average burden hours per response.....38	

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 48

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2021 - * 24

Amendment No. (req. for Amendments *)

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"/>
Pilot	Extension of Time Period for Commission Action *	Date Expires *	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934		
Section 806(e)(1) *		Section 806(e)(2) *	Section 3C(b)(2) *		
<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



Description

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

A proposal to amend the Exchanges Pricing Schedule at Options 7 to adopt pricing for index options on the Nasdaq 100 Micro Index.

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 *	Sun	Last Name *	Kim
Title *	Associate General Counsel		
E-mail *	Sun.Kim@nasdaq.com		
Telephone *	(646) 420-7816	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 04/15/2021

By John Zecca

EVP and Chief Legal Officer

(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 EDDS website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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

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

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document



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

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document



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

Exhibit 4 - Marked Copies

Add Remove View

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

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

1. Text of the Proposed Rule Change

(a) Nasdaq PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s Pricing Schedule at Options 7 to adopt pricing for index options on the Nasdaq 100 Micro Index, as described further below.

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:

Sun Kim
Associate General Counsel
Nasdaq, Inc.
646-420-7816

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

The Exchange recently received approval to list index options on the Nasdaq 100 Micro Index (“XND”) on a pilot basis.³ XND will be same in all respects as the current Nasdaq 100 Index options contract (“NDX”) listed on the Exchange, except it will be based on 1/100th of the value of Nasdaq 100 Index, and will be P.M. settled with an exercise settlement value based on the closing index value of Nasdaq 100 Index on the day of expiration.⁴ The Exchange will begin to list XND on April 15, 2021.

The Exchange now proposes to amend its Pricing Schedule to adopt pricing for XND. By way of background, certain proprietary products such as NDX and NDXP are commonly excluded from a variety of fee programs. The Exchange notes that the reason for such exclusion is because the Exchange has expended considerable resources developing and maintaining its proprietary products. Similar to NDX and NDXP, XND is a proprietary product. As such, the Exchange proposes to establish transaction fees for XND that are similarly structured to the transaction fees for NDX and NDXP with some differences as noted below. The Exchange also proposes to exclude XND from several pricing programs in the same manner as which NDX and NDXP are excluded today.

³ See Securities Exchange Act Release No. 91524 (April 9, 2021) (SR-Phlx-2021-07).

⁴ Id. The Exchange notes that similar features are available with other index options contracts listed on the Exchange, including P.M. settled options on the full value of the Nasdaq-100 Index (“NDXP”).

Options 7, Section 1.B

Today, the Customer⁵ Rebates in Section 1.B of the Pricing Schedule are not paid on NDX or NDXP in any rebate category. However, NDX or NDXP contracts count toward the volume requirement to qualify for a Customer Rebate Tier. The Exchange proposes to apply the Customer Rebate program in the same manner for XND.

Options 7, Section 4

Options Transaction Charges and Surcharges

Today, as set forth in Options 7, Section 4, electronic (both simple and complex orders) and floor Options Transaction Charges for NDX and NDXP are \$0.75 per contract for all Non-Customers.⁶ No Options Transaction Charges for NDX and NDXP apply to Customers. Furthermore, a \$0.25 per contract surcharge is assessed to Non-Customers in NDX and NDXP.

The Exchange now proposes to establish a similar pricing structure for XND where all Non-Customers will be assessed a uniform Options Transaction Charge for electronic (simple and complex orders) and floor transactions, and Customers will not be assessed any Options Transaction Charges. Specifically, the Exchange proposes to assess Non-Customers a uniform electronic and floor Options Transaction Charge of \$0.10 per contract in XND. As noted above, Customers will receive free executions in XND. The Exchange also proposes to assess Non-Customers a surcharge of \$0.10 per contract in

⁵ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(b)(45)).

⁶ The term "Non-Customer" applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs.

XND. The Exchange is proposing to assess a lower Options Transaction Charge and surcharge for XND as compared to NDX and NDXP because XND is based on 1/100 of the value of the Nasdaq 100 Index whereas both NDX and NDXP are based on the full value of the Nasdaq 100 Index. The Exchange therefore seeks to assess corresponding reduced fees for XND.

Fee Programs

Today, NDX and NDXP are excluded from a variety of fee programs in Options 7, Section 4. The Exchange proposes to update Options 7, Section 4 to similarly exclude XND from these fee programs.

NDX and NDXP are currently excluded from the \$0.12 per contract surcharge assessed to electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Symbols.⁷ The Exchange proposes to extend this exclusion to XND.

Today, Lead Market Makers⁸ and Market Makers⁹ are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying NDX and NDXP; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders,

⁷ See Options 7, Section 4, note 7. The Exchange notes that XND, like NDX and NDXP, is a Non-Penny Symbol.

⁸ The term "Lead Market Maker" applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)).

⁹ The term "Market Maker" is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a).

as defined in Options 8, Section 30(e)). The Exchange proposes to similarly exclude XND from the Monthly Market Maker Cap.

Today, Firms¹⁰ are subject to a maximum fee of \$75,000 (“Monthly Firm Fee Cap”) where Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. NDX and NDXP transactions are currently excluded from the Monthly Firm Fee Cap. The Exchange proposes to likewise exclude XND transactions from the Monthly Firm Fee Cap.

Today, the Exchange waives the Firm Floor Options Transaction Charges in Options 7, Section 4 for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership¹¹ represents both sides of a Firm transaction when such members are trading in their own proprietary account. In addition, the Broker-Dealer¹² Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary

¹⁰ The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

¹¹ The term "Common Ownership" shall mean members or member organizations under 75% common ownership or control.

¹² The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

account contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.¹³ NDX and NDXP transactions are currently excluded from each of the waivers set forth in the above paragraph. The Exchange proposes to likewise exclude XND transactions from the foregoing waivers.

Today, transactions in NDX and NDXP are excluded from the "Strategy Caps" in Options 7, Section 4. Strategy Caps limit the fees that otherwise apply to certain categories of market participants when they engage in floor options transactions while employing strategies set forth in the Pricing Schedule, namely dividend, merger, short stock interest, reversal and conversion, jelly roll, or box spread strategies. The Exchange proposes to likewise exclude transactions in XND from Strategy Caps.

Today, no Marketing Fees are assessed on transactions in NDX or NDXP. The Exchange proposes to likewise exclude XND transactions from the Marketing Fees.

Options 7, Section 6

PIXL Pricing

Today, options overlying NDX and NDXP are not subject to Options 7, Section 6.A. PIXL Pricing.¹⁴ The Exchange proposes to likewise exclude XND from PIXL

¹³ The Exchange will correct the typo in the rule text from "BDCustomer Facilitation" to "BD-Customer Facilitation."

¹⁴ The Exchange will remove the stray comma from the rule text.

Pricing in Options 7, Section 6.A. Like NDX and NDXP transactions, XND transactions in PIXL will be subject to Options 7, Section 5.A pricing.¹⁵

FLEX Transaction Fees

Today, FLEX options are assessed the transaction fees set forth in Options 7, Section 6.B.¹⁶ Pursuant to this Section 6.B, the NDX and NDXP options surcharge of \$0.25 per contract applies to FLEX NDX and NDXP options for all Non-Customers.¹⁷ Furthermore, the NDX and NDXP Options Transaction Charges of \$0.75 per contract (Non-Customer) and \$0.00 per contract (Customer) currently within Options 7, Section 4 apply to FLEX NDX and NDXP options.¹⁸

The Exchange proposes to charge FLEX XND options in a similar manner. Specifically, the Exchange will apply the proposed XND options surcharge of \$0.10 per contract to Non-Customers in FLEX XND options. Further, the Exchange will apply the proposed XND Options Transaction Charges of \$0.10 per contract (Non-Customer) and \$0.00 per contract (Customer) to FLEX XND options.

¹⁵ As discussed later in this filing, the Exchange is also proposing to relocate NDX and NDXP pricing from Options 7, Section 4 into a separate schedule with XND pricing within Options 7, Section 5.A. Accordingly, the current reference to Options 7, Section 4 NDX and NDXP pricing within the PIXL pricing schedule will be updated to Options 7, Section 5.A.

¹⁶ The characteristics of a FLEX option are described in Options 8, Section 34.

¹⁷ The Exchange will correct the typo in the rule text from “Section 6, B” to “Section 6.B.”

¹⁸ See supra note 15. All current references to Options 7, Section 4 NDX and NDXP pricing within the FLEX transaction fees schedule will be updated to Options 7, Section 5.A.

Market Access and Routing Subsidy (“MARS”)

Today, as set forth in Options 7, Section 6.E, the Exchange provides MARS Payments to Phlx members that have System Eligibility¹⁹ and have routed the requisite number of Eligible Contracts²⁰ daily in a month, which were executed on Phlx. Currently, NDX and NDXP are not considered Eligible Contracts. Under this proposal, XND will likewise be excluded from Eligible Contracts.

Options 7, Section 5

In connection with the foregoing changes to adopt pricing for XND, the Exchange proposes to relocate the pricing for NDX and NDXP and related notes presently set forth in Options 7, Section 4 regarding the Options Transaction Charges and the Non-Customer surcharge, and to group them with the proposed Options Transaction Charges

¹⁹ To qualify for MARS, a Phlx member's routing system ("hereinafter System") would be required to: (1) enable the electronic routing of orders to all of the U.S. options exchanges, including Phlx; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with Phlx's API to access current Phlx match engine functionality. Further, the member's System would also need to cause Phlx to be the one of the top five default destination exchanges for individually executed marketable orders if Phlx is at the national best bid or offer ("NBBO"), regardless of size or time, but allow any user to manually override Phlx as a default destination on an order-by-order basis. Notwithstanding the above, with respect to Complex Orders a Phlx member's routing system would not be required to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges. Any Phlx member would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies Phlx that it appears to be robust and reliable. The member remains solely responsible for implementing and operating its system.

²⁰ For the purpose of qualifying for the MARS Payment, Eligible Contracts include the following: Firm, Broker-Dealer, Joint Back Office or "JBO" or Professional equity option orders that are electronically delivered and executed. Eligible Contracts do not include floor-based orders, qualified contingent cross or "QCC" orders, price improvement or "PIXL" orders, or Singly Listed Orders.

and proposed Non-Customer surcharge for XND.²¹ The Exchange proposes to set forth the foregoing fees in new Section 5.A of Options 7, and title this section “Broad-Based Index Options.” As proposed, the pricing schedule in Options 7, Section 5.A, which will apply to electronic (simple and complex orders) and floor transactions, will be as follows:

Options Transaction Charges					
Symbol	Customer	Professional	Lead Market Maker and Market Maker	Broker-Dealer	Firm
NDX¹	\$0.00	\$0.75	\$0.75	\$0.75	\$0.75
NDXP¹	\$0.00	\$0.75	\$0.75	\$0.75	\$0.75
XND²	\$0.00	\$0.10	\$0.10	\$0.10	\$0.10

- These fees are per contract.
- Floor transaction fees will apply to any "as of" or "reversal" adjustments for manually processed trades originally submitted electronically or through FBMS.

¹ A surcharge for NDX and NDXP of \$0.25 per contract will be assessed to Non-Customers.

² A surcharge for XND of \$0.10 per contract will be assessed to Non-Customers.

As shown above, the rates for NDX and NDXP are not changing; rather, the existing Options Transaction Charges and Non-Customer surcharges in Options 7, Section 4 are being relocated into Options 7, Section 5.A and grouped together with the proposed pricing for XND. The Exchange considers it appropriate to separate out NDX, NDXP, and XND pricing in the manner described above so that Phlx’s pricing for these index options may be easily located within its Pricing Schedule. For the sake of clarity, the Exchange also proposes to amend the Options Transaction Charge header for Non-

²¹ In particular, note 5 will be deleted in Options 7, Section 4 and relocated into new note 1 in Options 7, Section 5.A. Further, the note 8 language in Options 7, Section 4 will be copied into a new bullet point in Options 7, Section 5.A.

Penny Symbols in Options 7, Section 4, which already excludes NDX and NDXP, to add XND to the list of excluded Non-Penny Symbols that will not be subject to this fee. The Exchange further proposes to amend its Pricing Schedule to update all current references to Options 7, Section 4 NDX and NDXP pricing to Options 7, Section 5.A.²²

The Exchange also proposes non-substantive, clean-up changes in Options 7, Section 5 to restructure the existing rule text. With the changes proposed above to add new Section 5.A of Options 7 to set forth NDX, NDXP, and XND pricing, the Exchange proposes to set forth Singly Listed Options pricing in new Section 5.B. The Exchange also proposes to set forth FX Options pricing in new Section 5.C, and further proposes to relocate the language regarding U.S. dollar-settled foreign currency options into the new Section 5.C header. Accordingly, new Section 5.C will be titled, “FX Options: U.S. dollar-settled foreign currency options include XDB, XDE, XDN, XDS, XDA, XDZ and XDC.” The Exchange is not amending any of the existing rates for Singly Listed Options or FX Options with this proposal. Lastly, the Exchange proposes to retitle Options 7, Section 5 as “Index and Singly Listed Options (Includes options overlying FX Options, equities, ETFs, ETNs, and indexes not listed on another exchange).”

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees and

²² In particular, the Exchange will update references within Options 7, Sections 6.A and 6.B.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(4) and (5).

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.

Options 7, Section 1.B

The Exchange's proposal to not pay the Customer Rebates in Options 7, Section 1.B on XND, but to count XND volume toward qualifying for a Customer Rebate Tier, similar to NDX and NDXP, is reasonable because the Exchange seeks to treat XND in the same manner as NDX and NDXP under this rebate program. NDX, NDXP, and XND represent similar options on the same underlying Nasdaq 100 Index. Further, it is reasonable to not pay Customer Rebates on XND in any rebate category because this index option will be exclusively listed on Phlx only. The original intent of the Customer Rebate Program was to pay rebates on electronically-delivered multiply-listed options. By definition, XND will not be a multiply-listed option, and the Exchange does not desire to pay rebates on XND because of the exclusivity of this option. While the Exchange will not pay any Customer Rebates on XND transactions, the Exchange also believes it is reasonable to count XND in the total volume to qualify a market participant for these rebates as market participants would be incentivized to transact in XND to qualify for the Customer Rebate Tiers.

The Exchange believes that its proposal to not pay Customer Rebates on XND, but to count XND volume toward the volume requirement to qualify for a rebate tier is equitable and not unfairly discriminatory because the Exchange would apply the rebate program as described uniformly for all market participants. Any market participant is eligible to earn a Customer Rebate.

Options 7, Section 4

Options Transaction Charges and Surcharges

The Exchange believes it is reasonable to assess the proposed Options Transaction Charge and Non-Customer surcharge as discussed above for XND because the proposed pricing reflects the exclusive and proprietary nature of this product. Similar to NDX and NDXP, the Exchange seeks to recoup the operational costs for listing proprietary products.²⁵ Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.²⁶ Further, the Exchange notes that with its products, market participants are offered an opportunity to transact in NDX, NDXP, or XND, or separately execute options overlying PowerShares QQQ Trust (“QQQ”).²⁷ Offering such proprietary products provides market participants with a variety of choices in selecting the product they desire to utilize in order to transact in the Nasdaq 100 Index. When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

²⁵ By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a multiply listed option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

²⁶ See pricing for the Mini-RUT Index options (“MRUT”) on Cboe Exchange, Inc.’s Fees Schedule.

²⁷ QQQ is an exchange-traded fund based on the same Nasdaq 100 Index as NDX, NDXP, and XND.

Further, the Exchange believes that the proposed rates for XND are reasonable because they are well within the range of fees assessed for the Exchange's other proprietary products, namely NDX and NDXP.²⁸ The Exchange believes it is reasonable to charge lower rates for XND compared to NDX and NDXP because XND is based on 1/100 of the value of the Nasdaq 100 Index while both NDX and NDXP are based on the full value of the Nasdaq 100 Index. The Exchange therefore seeks to assess corresponding reduced fees for this product.

The Exchange's proposal to assess the \$0.10 per contract Options Transaction Charge in XND is equitable and not unfairly discriminatory because the Exchange will assess this fee uniformly to all Non-Customers. The Exchange similarly believes that the proposed \$0.10 per contract XND surcharge is equitable and not unfairly discriminatory because it will apply uniformly to all Non-Customers. The Exchange believes it is equitable and not unfairly discriminatory to assess no transaction fees to Customers for XND because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Lead Market Makers and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

²⁸ Specifically, the Exchange is proposing to assess Non-Customers an Options Transaction Charge of \$0.10 per contract in XND while Customers will receive free executions. Today, the Exchange assesses Non-Customers an Options Transaction Charge of \$0.75 per contract for both NDX and NDXP, and does not assess Customers an Options Transaction Charge. Additionally, the Exchange is proposing to assess Non-Customers a surcharge of \$0.10 per contract for XND whereas today, Non-Customers are assessed a surcharge of \$0.25 per contract for NDX and NDXP.

Fee Programs

The Exchange believes that the proposed updates in Options 7, Section 4 in connection with the application of certain fee programs to XND are reasonable, equitable, and not unfairly discriminatory. Particularly, the Exchange believes that it is reasonable to exclude XND from the Non-Penny complex surcharge in note 7 of Options 7, Section 4, Monthly Market Maker Cap, Monthly Firm Fee Cap, Floor Options Transaction Charge waivers, Strategy Caps, and Marketing Fees in the same manner in which NDX and NDXP are currently excluded from the same programs today. The Exchange believes it is appropriate to update these fee programs in a manner that similarly situates XND with NDX and NDXP as these are all proprietary products that are based on the Nasdaq 100 Index. In addition, similar to NDX and NDXP, the Exchange seeks to recoup the operational costs for listing proprietary products by excluding XND from programs that cap or waive transaction fees for market participants. As it relates to the Marketing Fee, the Exchange believes it is reasonable to exclude XND from this fee, similar to NDX and NDXP today, because the purpose of the Marketing Fee is to generate more Customer order flow to the Exchange. Because XND will be an exclusively listed product on Phlx, the Exchange does not believe that applying a marketing fee is necessary for this product.

The Exchange's proposal to exclude XND from the various fee programs in Options 7, Section 4 as discussed above is equitable and not unfairly discriminatory because the programs will equally exclude in the same manner all market participants' orders in XND. The Exchange notes that its proposal does not alter any of the existing

fee programs, but instead merely proposes to exclude XND in those programs in the same way that NDX and NDXP are currently excluded.

Options 7, Section 6

PIXL Pricing

The Exchange's proposal to exclude XND from PIXL pricing in Options 7, Section 6.A, and instead assess XND transactions in PIXL the proposed Options 7, Section 5.A pricing is reasonable because the Exchange intends to assess the same fees across the board for XND transactions (i.e., \$0.10 per contract for Non-Customers and free executions for Customers). This will align the pricing structure for XND with NDX and NDXP, which are currently assessed the same \$0.75 per contract Non-Customer fee across the board while Customers receive free executions.

The proposed changes are equitable and not unfairly discriminatory because the Exchange will uniformly exclude NDXP from PIXL pricing for all market participants, and instead uniformly charge them the Options 7, Section 5.A pricing.

FLEX Transaction Fees

The Exchange believes that its proposal to assess FLEX XND options the Options Transaction Charge and Non-Customer options surcharge in Options 7, Section 5.A is reasonable because the Exchange intends to assess the same fees across the board for XND transactions. Specifically, the Exchange will apply the proposed XND options surcharge of \$0.10 per contract to Non-Customers in FLEX XND options. Further, the Exchange will apply the proposed XND Options Transaction Charges of \$0.10 per contract (Non-Customer) and \$0.00 per contract (Customer) to FLEX XND options. FLEX NDX and NDXP options are likewise assessed the same Options Transaction

Charge and Non-Customer options surcharge that NDX and NDXP options are assessed today. The Exchange's proposal is equitable and not unfairly discriminatory because the Exchange will uniformly apply these fees to FLEX NDX and NDXP options to all similarly situated market participants.

MARS

The Exchange believes it is reasonable to exclude XND from Eligible Contracts for purposes of qualifying for a MARS Payment in the same manner in which NDX and NDXP are currently excluded today. The Exchange believes it is appropriate to update its MARS program in a manner that similarly situates XND with its other proprietary products, NDX and NDXP, which are all based on the Nasdaq 100 Index.

The Exchange believes that its proposal is equitable and not unfairly discriminatory because the Exchange will uniformly exclude XND from MARS for all market participants.

Options 7, Section 5

The Exchange believes that the proposed changes to relocate and group the transaction fees for NDX, NDXP, and XND within Options 7, Section 5.A, and all of the non-substantive changes related to the relocation, each as discussed above, are reasonable, equitable, and not unfairly discriminatory. The proposed changes are all intended to bring greater clarity, and will ensure that the Exchange's pricing for NDX, NDXP, and XND may be easily located within its Pricing Schedule. The Exchange further believes that the proposed non-substantive changes in Options 7, Section 5 to restructure the existing rule text and retitle various section headers are reasonable,

equitable, and not unfairly discriminatory as they will facilitate the use of the Pricing Schedule by market participants.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. The Exchange notes that with its products, market participants are offered an opportunity to transact in NDX, NDXP, or XND, or separately execute options overlying QQQ. Offering these products provides market participants with a variety of choices in selecting the product they desire to utilize to transact in the Nasdaq 100 Index.

Further, the Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed XND pricing will apply uniformly to all similarly situated market participants. Specifically, all Non-Customers will be assessed a uniform Options Transaction Charge and options surcharge while Customers receive free executions. As discussed above, Customer liquidity benefits all market participants by providing more trading opportunities, which attracts other market participants, thus facilitating tighter spreads and increased order flow.

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,²⁹ 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.

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-Phlx-2021-24)

April __, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Exchange’s Pricing Schedule at Options 7 to adopt pricing for index options on the Nasdaq 100 Micro Index

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 April 15, 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 the Exchange’s Pricing Schedule at Options 7 to adopt pricing for index options on the Nasdaq 100 Micro Index, as described further below.

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.

¹ 15 U.S.C. 78s(b)(1).

² 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

The Exchange recently received approval to list index options on the Nasdaq 100 Micro Index (“XND”) on a pilot basis.³ XND will be same in all respects as the current Nasdaq 100 Index options contract (“NDX”) listed on the Exchange, except it will be based on 1/100th of the value of Nasdaq 100 Index, and will be P.M. settled with an exercise settlement value based on the closing index value of Nasdaq 100 Index on the day of expiration.⁴ The Exchange will begin to list XND on April 15, 2021.

The Exchange now proposes to amend its Pricing Schedule to adopt pricing for XND. By way of background, certain proprietary products such as NDX and NDXP are commonly excluded from a variety of fee programs. The Exchange notes that the reason for such exclusion is because the Exchange has expended considerable resources developing and maintaining its proprietary products. Similar to NDX and NDXP, XND

³ See Securities Exchange Act Release No. 91524 (April 9, 2021) (SR-Phlx-2021-07).

⁴ Id. The Exchange notes that similar features are available with other index options contracts listed on the Exchange, including P.M. settled options on the full value of the Nasdaq-100 Index (“NDXP”).

is a proprietary product. As such, the Exchange proposes to establish transaction fees for XND that are similarly structured to the transaction fees for NDX and NDXP with some differences as noted below. The Exchange also proposes to exclude XND from several pricing programs in the same manner as which NDX and NDXP are excluded today.

Options 7, Section 1.B

Today, the Customer⁵ Rebates in Section 1.B of the Pricing Schedule are not paid on NDX or NDXP in any rebate category. However, NDX or NDXP contracts count toward the volume requirement to qualify for a Customer Rebate Tier. The Exchange proposes to apply the Customer Rebate program in the same manner for XND.

Options 7, Section 4

Options Transaction Charges and Surcharges

Today, as set forth in Options 7, Section 4, electronic (both simple and complex orders) and floor Options Transaction Charges for NDX and NDXP are \$0.75 per contract for all Non-Customers.⁶ No Options Transaction Charges for NDX and NDXP apply to Customers. Furthermore, a \$0.25 per contract surcharge is assessed to Non-Customers in NDX and NDXP.

The Exchange now proposes to establish a similar pricing structure for XND where all Non-Customers will be assessed a uniform Options Transaction Charge for electronic (simple and complex orders) and floor transactions, and Customers will not be

⁵ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(b)(45)).

⁶ The term "Non-Customer" applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs.

assessed any Options Transaction Charges. Specifically, the Exchange proposes to assess Non-Customers a uniform electronic and floor Options Transaction Charge of \$0.10 per contract in XND. As noted above, Customers will receive free executions in XND. The Exchange also proposes to assess Non-Customers a surcharge of \$0.10 per contract in XND. The Exchange is proposing to assess a lower Options Transaction Charge and surcharge for XND as compared to NDX and NDXP because XND is based on 1/100 of the value of the Nasdaq 100 Index whereas both NDX and NDXP are based on the full value of the Nasdaq 100 Index. The Exchange therefore seeks to assess corresponding reduced fees for XND.

Fee Programs

Today, NDX and NDXP are excluded from a variety of fee programs in Options 7, Section 4. The Exchange proposes to update Options 7, Section 4 to similarly exclude XND from these fee programs.

NDX and NDXP are currently excluded from the \$0.12 per contract surcharge assessed to electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Symbols.⁷ The Exchange proposes to extend this exclusion to XND.

Today, Lead Market Makers⁸ and Market Makers⁹ are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic Option Transaction Charges,

⁷ See Options 7, Section 4, note 7. The Exchange notes that XND, like NDX and NDXP, is a Non-Penny Symbol.

⁸ The term "Lead Market Maker" applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)).

excluding surcharges and excluding options overlying NDX and NDXP; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). The Exchange proposes to similarly exclude XND from the Monthly Market Maker Cap.

Today, Firms¹⁰ are subject to a maximum fee of \$75,000 (“Monthly Firm Fee Cap”) where Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. NDX and NDXP transactions are currently excluded from the Monthly Firm Fee Cap. The Exchange proposes to likewise exclude XND transactions from the Monthly Firm Fee Cap.

Today, the Exchange waives the Firm Floor Options Transaction Charges in Options 7, Section 4 for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership¹¹ represents both sides of a Firm transaction when such members

⁹ The term "Market Maker" is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a).

¹⁰ The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

¹¹ The term "Common Ownership" shall mean members or member organizations under 75% common ownership or control.

are trading in their own proprietary account. In addition, the Broker-Dealer¹² Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.¹³ NDX and NDXP transactions are currently excluded from each of the waivers set forth in the above paragraph. The Exchange proposes to likewise exclude XND transactions from the foregoing waivers.

Today, transactions in NDX and NDXP are excluded from the "Strategy Caps" in Options 7, Section 4. Strategy Caps limit the fees that otherwise apply to certain categories of market participants when they engage in floor options transactions while employing strategies set forth in the Pricing Schedule, namely dividend, merger, short stock interest, reversal and conversion, jelly roll, or box spread strategies. The Exchange proposes to likewise exclude transactions in XND from Strategy Caps.

Today, no Marketing Fees are assessed on transactions in NDX or NDXP. The Exchange proposes to likewise exclude XND transactions from the Marketing Fees.

¹² The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

¹³ The Exchange will correct the typo in the rule text from "BDCustomer Facilitation" to "BD-Customer Facilitation."

Options 7, Section 6

PIXL Pricing

Today, options overlying NDX and NDXP are not subject to Options 7, Section 6.A. PIXL Pricing.¹⁴ The Exchange proposes to likewise exclude XND from PIXL Pricing in Options 7, Section 6.A. Like NDX and NDXP transactions, XND transactions in PIXL will be subject to Options 7, Section 5.A pricing.¹⁵

FLEX Transaction Fees

Today, FLEX options are assessed the transaction fees set forth in Options 7, Section 6.B.¹⁶ Pursuant to this Section 6.B, the NDX and NDXP options surcharge of \$0.25 per contract applies to FLEX NDX and NDXP options for all Non-Customers.¹⁷ Furthermore, the NDX and NDXP Options Transaction Charges of \$0.75 per contract (Non-Customer) and \$0.00 per contract (Customer) currently within Options 7, Section 4 apply to FLEX NDX and NDXP options.¹⁸

The Exchange proposes to charge FLEX XND options in a similar manner. Specifically, the Exchange will apply the proposed XND options surcharge of \$0.10 per

¹⁴ The Exchange will remove the stray comma from the rule text.

¹⁵ As discussed later in this filing, the Exchange is also proposing to relocate NDX and NDXP pricing from Options 7, Section 4 into a separate schedule with XND pricing within Options 7, Section 5.A. Accordingly, the current reference to Options 7, Section 4 NDX and NDXP pricing within the PIXL pricing schedule will be updated to Options 7, Section 5.A.

¹⁶ The characteristics of a FLEX option are described in Options 8, Section 34.

¹⁷ The Exchange will correct the typo in the rule text from “Section 6, B” to “Section 6.B.”

¹⁸ See supra note 15. All current references to Options 7, Section 4 NDX and NDXP pricing within the FLEX transaction fees schedule will be updated to Options 7, Section 5.A.

contract to Non-Customers in FLEX XND options. Further, the Exchange will apply the proposed XND Options Transaction Charges of \$0.10 per contract (Non-Customer) and \$0.00 per contract (Customer) to FLEX XND options.

Market Access and Routing Subsidy ("MARS")

Today, as set forth in Options 7, Section 6.E, the Exchange provides MARS Payments to Phlx members that have System Eligibility¹⁹ and have routed the requisite number of Eligible Contracts²⁰ daily in a month, which were executed on Phlx.

Currently, NDX and NDXP are not considered Eligible Contracts. Under this proposal, XND will likewise be excluded from Eligible Contracts.

¹⁹ To qualify for MARS, a Phlx member's routing system ("hereinafter System") would be required to: (1) enable the electronic routing of orders to all of the U.S. options exchanges, including Phlx; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with Phlx's API to access current Phlx match engine functionality. Further, the member's System would also need to cause Phlx to be the one of the top five default destination exchanges for individually executed marketable orders if Phlx is at the national best bid or offer ("NBBO"), regardless of size or time, but allow any user to manually override Phlx as a default destination on an order-by-order basis. Notwithstanding the above, with respect to Complex Orders a Phlx member's routing system would not be required to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges. Any Phlx member would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies Phlx that it appears to be robust and reliable. The member remains solely responsible for implementing and operating its system.

²⁰ For the purpose of qualifying for the MARS Payment, Eligible Contracts include the following: Firm, Broker-Dealer, Joint Back Office or "JBO" or Professional equity option orders that are electronically delivered and executed. Eligible Contracts do not include floor-based orders, qualified contingent cross or "QCC" orders, price improvement or "PIXL" orders, or Singly Listed Orders.

Options 7, Section 5

In connection with the foregoing changes to adopt pricing for XND, the Exchange proposes to relocate the pricing for NDX and NDXP and related notes presently set forth in Options 7, Section 4 regarding the Options Transaction Charges and the Non-Customer surcharge, and to group them with the proposed Options Transaction Charges and proposed Non-Customer surcharge for XND.²¹ The Exchange proposes to set forth the foregoing fees in new Section 5.A of Options 7, and title this section “Broad-Based Index Options.” As proposed, the pricing schedule in Options 7, Section 5.A, which will apply to electronic (simple and complex orders) and floor transactions, will be as follows:

Options Transaction Charges					
Symbol	Customer	Professional	Lead Market Maker and Market Maker	Broker-Dealer	Firm
NDX¹	\$0.00	\$0.75	\$0.75	\$0.75	\$0.75
NDXP¹	\$0.00	\$0.75	\$0.75	\$0.75	\$0.75
XND²	\$0.00	\$0.10	\$0.10	\$0.10	\$0.10

- These fees are per contract.
- Floor transaction fees will apply to any "as of" or "reversal" adjustments for manually processed trades originally submitted electronically or through FBMS.

¹ A surcharge for NDX and NDXP of \$0.25 per contract will be assessed to Non-Customers.

² A surcharge for XND of \$0.10 per contract will be assessed to Non-Customers.

²¹ In particular, note 5 will be deleted in Options 7, Section 4 and relocated into new note 1 in Options 7, Section 5.A. Further, the note 8 language in Options 7, Section 4 will be copied into a new bullet point in Options 7, Section 5.A.

As shown above, the rates for NDX and NDXP are not changing; rather, the existing Options Transaction Charges and Non-Customer surcharges in Options 7, Section 4 are being relocated into Options 7, Section 5.A and grouped together with the proposed pricing for XND. The Exchange considers it appropriate to separate out NDX, NDXP, and XND pricing in the manner described above so that Phlx's pricing for these index options may be easily located within its Pricing Schedule. For the sake of clarity, the Exchange also proposes to amend the Options Transaction Charge header for Non-Penny Symbols in Options 7, Section 4, which already excludes NDX and NDXP, to add XND to the list of excluded Non-Penny Symbols that will not be subject to this fee. The Exchange further proposes to amend its Pricing Schedule to update all current references to Options 7, Section 4 NDX and NDXP pricing to Options 7, Section 5.A.²²

The Exchange also proposes non-substantive, clean-up changes in Options 7, Section 5 to restructure the existing rule text. With the changes proposed above to add new Section 5.A of Options 7 to set forth NDX, NDXP, and XND pricing, the Exchange proposes to set forth Singly Listed Options pricing in new Section 5.B. The Exchange also proposes to set forth FX Options pricing in new Section 5.C, and further proposes to relocate the language regarding U.S. dollar-settled foreign currency options into the new Section 5.C header. Accordingly, new Section 5.C will be titled, "FX Options: U.S. dollar-settled foreign currency options include XDB, XDE, XDN, XDS, XDA, XDZ and XDC." The Exchange is not amending any of the existing rates for Singly Listed Options or FX Options with this proposal. Lastly, the Exchange proposes to retitle Options 7,

²² In particular, the Exchange will update references within Options 7, Sections 6.A and 6.B.

Section 5 as “Index and Singly Listed Options (Includes options overlying FX Options, equities, ETFs, ETNs, and indexes not listed on another exchange).”

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²⁴ 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.

Options 7, Section 1.B

The Exchange’s proposal to not pay the Customer Rebates in Options 7, Section 1.B on XND, but to count XND volume toward qualifying for a Customer Rebate Tier, similar to NDX and NDXP, is reasonable because the Exchange seeks to treat XND in the same manner as NDX and NDXP under this rebate program. NDX, NDXP, and XND represent similar options on the same underlying Nasdaq 100 Index. Further, it is reasonable to not pay Customer Rebates on XND in any rebate category because this index option will be exclusively listed on Phlx only. The original intent of the Customer Rebate Program was to pay rebates on electronically-delivered multiply-listed options. By definition, XND will not be a multiply-listed option, and the Exchange does not desire to pay rebates on XND because of the exclusivity of this option. While the Exchange will not pay any Customer Rebates on XND transactions, the Exchange also believes it is reasonable to count XND in the total volume to qualify a market participant for these

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(4) and (5).

rebates as market participants would be incentivized to transact in XND to qualify for the Customer Rebate Tiers.

The Exchange believes that its proposal to not pay Customer Rebates on XND, but to count XND volume toward the volume requirement to qualify for a rebate tier is equitable and not unfairly discriminatory because the Exchange would apply the rebate program as described uniformly for all market participants. Any market participant is eligible to earn a Customer Rebate.

Options 7, Section 4

Options Transaction Charges and Surcharges

The Exchange believes it is reasonable to assess the proposed Options Transaction Charge and Non-Customer surcharge as discussed above for XND because the proposed pricing reflects the exclusive and proprietary nature of this product. Similar to NDX and NDXP, the Exchange seeks to recoup the operational costs for listing proprietary products.²⁵ Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.²⁶ Further, the Exchange notes that with its products, market participants are offered an opportunity to transact in NDX, NDXP, or XND, or separately execute options overlying

²⁵ By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a multiply listed option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

²⁶ See pricing for the Mini-RUT Index options (“MRUT”) on Cboe Exchange, Inc.’s Fees Schedule.

PowerShares QQQ Trust (“QQQ”).²⁷ Offering such proprietary products provides market participants with a variety of choices in selecting the product they desire to utilize in order to transact in the Nasdaq 100 Index. When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

Further, the Exchange believes that the proposed rates for XND are reasonable because they are well within the range of fees assessed for the Exchange’s other proprietary products, namely NDX and NDXP.²⁸ The Exchange believes it is reasonable to charge lower rates for XND compared to NDX and NDXP because XND is based on 1/100 of the value of the Nasdaq 100 Index while both NDX and NDXP are based on the full value of the Nasdaq 100 Index. The Exchange therefore seeks to assess corresponding reduced fees for this product.

The Exchange’s proposal to assess the \$0.10 per contract Options Transaction Charge in XND is equitable and not unfairly discriminatory because the Exchange will assess this fee uniformly to all Non-Customers. The Exchange similarly believes that the proposed \$0.10 per contract XND surcharge is equitable and not unfairly discriminatory because it will apply uniformly to all Non-Customers. The Exchange believes it is

²⁷ QQQ is an exchange-traded fund based on the same Nasdaq 100 Index as NDX, NDXP, and XND.

²⁸ Specifically, the Exchange is proposing to assess Non-Customers an Options Transaction Charge of \$0.10 per contract in XND while Customers will receive free executions. Today, the Exchange assesses Non-Customers an Options Transaction Charge of \$0.75 per contract for both NDX and NDXP, and does not assess Customers an Options Transaction Charge. Additionally, the Exchange is proposing to assess Non-Customers a surcharge of \$0.10 per contract for XND whereas today, Non-Customers are assessed a surcharge of \$0.25 per contract for NDX and NDXP.

equitable and not unfairly discriminatory to assess no transaction fees to Customers for XND because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Lead Market Makers and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Fee Programs

The Exchange believes that the proposed updates in Options 7, Section 4 in connection with the application of certain fee programs to XND are reasonable, equitable, and not unfairly discriminatory. Particularly, the Exchange believes that it is reasonable to exclude XND from the Non-Penny complex surcharge in note 7 of Options 7, Section 4, Monthly Market Maker Cap, Monthly Firm Fee Cap, Floor Options Transaction Charge waivers, Strategy Caps, and Marketing Fees in the same manner in which NDX and NDXP are currently excluded from the same programs today. The Exchange believes it is appropriate to update these fee programs in a manner that similarly situates XND with NDX and NDXP as these are all proprietary products that are based on the Nasdaq 100 Index. In addition, similar to NDX and NDXP, the Exchange seeks to recoup the operational costs for listing proprietary products by excluding XND from programs that cap or waive transaction fees for market participants. As it relates to the Marketing Fee, the Exchange believes it is reasonable to exclude XND from this fee, similar to NDX and NDXP today, because the purpose of the Marketing Fee is to generate more Customer order flow to the Exchange. Because XND will be an

exclusively listed product on Phlx, the Exchange does not believe that applying a marketing fee is necessary for this product.

The Exchange's proposal to exclude XND from the various fee programs in Options 7, Section 4 as discussed above is equitable and not unfairly discriminatory because the programs will equally exclude in the same manner all market participants' orders in XND. The Exchange notes that its proposal does not alter any of the existing fee programs, but instead merely proposes to exclude XND in those programs in the same way that NDX and NDXP are currently excluded.

Options 7, Section 6

PIXL Pricing

The Exchange's proposal to exclude XND from PIXL pricing in Options 7, Section 6.A, and instead assess XND transactions in PIXL the proposed Options 7, Section 5.A pricing is reasonable because the Exchange intends to assess the same fees across the board for XND transactions (i.e., \$0.10 per contract for Non-Customers and free executions for Customers). This will align the pricing structure for XND with NDX and NDXP, which are currently assessed the same \$0.75 per contract Non-Customer fee across the board while Customers receive free executions.

The proposed changes are equitable and not unfairly discriminatory because the Exchange will uniformly exclude NDXP from PIXL pricing for all market participants, and instead uniformly charge them the Options 7, Section 5.A pricing.

FLEX Transaction Fees

The Exchange believes that its proposal to assess FLEX XND options the Options Transaction Charge and Non-Customer options surcharge in Options 7, Section 5.A is

reasonable because the Exchange intends to assess the same fees across the board for XND transactions. Specifically, the Exchange will apply the proposed XND options surcharge of \$0.10 per contract to Non-Customers in FLEX XND options. Further, the Exchange will apply the proposed XND Options Transaction Charges of \$0.10 per contract (Non-Customer) and \$0.00 per contract (Customer) to FLEX XND options. FLEX NDX and NDXP options are likewise assessed the same Options Transaction Charge and Non-Customer options surcharge that NDX and NDXP options are assessed today. The Exchange's proposal is equitable and not unfairly discriminatory because the Exchange will uniformly apply these fees to FLEX NDX and NDXP options to all similarly situated market participants.

MARS

The Exchange believes it is reasonable to exclude XND from Eligible Contracts for purposes of qualifying for a MARS Payment in the same manner in which NDX and NDXP are currently excluded today. The Exchange believes it is appropriate to update its MARS program in a manner that similarly situates XND with its other proprietary products, NDX and NDXP, which are all based on the Nasdaq 100 Index.

The Exchange believes that its proposal is equitable and not unfairly discriminatory because the Exchange will uniformly exclude XND from MARS for all market participants.

Options 7, Section 5

The Exchange believes that the proposed changes to relocate and group the transaction fees for NDX, NDXP, and XND within Options 7, Section 5.A, and all of the non-substantive changes related to the relocation, each as discussed above, are

reasonable, equitable, and not unfairly discriminatory. The proposed changes are all intended to bring greater clarity, and will ensure that the Exchange's pricing for NDX, NDXP, and XND may be easily located within its Pricing Schedule. The Exchange further believes that the proposed non-substantive changes in Options 7, Section 5 to restructure the existing rule text and retitle various section headers are reasonable, equitable, and not unfairly discriminatory as they will facilitate the use of the Pricing Schedule by market participants.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. The Exchange notes that with its products, market participants are offered an opportunity to transact in NDX, NDXP, or XND, or separately execute options overlying QQQ. Offering these products provides market participants with a variety of choices in selecting the product they desire to utilize to transact in the Nasdaq 100 Index.

Further, the Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed XND pricing will apply uniformly to all similarly situated market participants. Specifically, all Non-Customers will be assessed a uniform Options Transaction Charge and options surcharge while Customers receive free

executions. As discussed above, Customer liquidity benefits all market participants by providing more trading opportunities, which attracts other market participants, thus facilitating tighter spreads and increased order flow.

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.²⁹

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
[\(<http://www.sec.gov/rules/sro.shtml>\);](http://www.sec.gov/rules/sro.shtml) or

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2021-24 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-2021-24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2021-24 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to
delegated authority.³⁰

J. Matthew DeLesDernier
Assistant Secretary

³⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

NASDAQ PHLX LLC Rules

* * * * *

Options Rules

* * * * *

Options 7 Pricing Schedule**Section 1 General Provisions**

* * * * *

B. Customer Rebate Program

The Customer Rebate Tiers described below will be calculated by totaling Customer volume in Multiply Listed Options (including SPY) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Options 3, Section 12. Rebates will be paid on Customer Rebate Tiers according to the below categories. Members and member organizations under Common Ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Affiliated Entities may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates.

Customer Rebate Tiers	Percentage Thresholds of National Customer Volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options (Monthly)	Category A	Category B	Category C	Category D
Tier 1	0.00% - 0.60%	\$0.00	\$0.00	\$0.00	\$0.00
Tier 2&	Above 0.60% - 1.10%	\$0.10 *	\$0.10 *	\$0.16 * #	\$0.21 * #
Tier 3	Above 1.10% - 1.60%	\$0.15	\$0.12 *	\$0.18 * #	\$0.22 * #
Tier 4	Above 1.60% - 2.50%	\$0.20	\$0.16	\$0.22 #	\$0.26 #
Tier 5	Above 2.50%	\$0.21	\$0.17	\$0.22 #	\$0.27 #

Category A: Rebate will be paid to members executing electronically-delivered Customer Simple Orders in Penny Symbols and Customer Simple Orders in Non-Penny Symbols in Options 7, Section 4 symbols.

Category B: Rebate will be paid on Customer PIXL Orders in Options 7, Section 4 symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer

PIXL Orders that execute against a PIXL Initiating Order will be paid a rebate of \$0.14 per contract. Rebates on Customer PIXL Orders will be capped at 4,000 contracts per order for Simple PIXL Orders.

Category C: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Penny Symbols in Options 7, Section 4 symbols. Rebate will be paid on Customer PIXL Complex Orders in Options 7, Section 4 symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will not be paid a rebate under any circumstances. The Category C Rebate will not be paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order.

Category D: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Non-Penny Symbols in Options 7, Section 4 symbols. Rebate will be paid on Customer PIXL Complex Orders in Options 7, Section 4 symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will not be paid a rebate under any circumstances. The Category D Rebate will not be paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order.

Rebates will not be paid on NDX₂ [or] NDXP₂, or XND contracts in any Category, however NDX₂ [or] NDXP₂, or XND contracts will count toward the volume requirement to qualify for a Customer Rebate Tier.

* * * * *

Section 4. Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY)

	Lead Market					
	Customer Professional	Market Maker	Broker-Dealer	Firm		
Electronic Floor						
Options Transaction						
Charge (Penny Symbol)⁶	\$0.00	\$0.48 ²	\$0.25 ⁸	\$0.22	\$0.35 ⁸	\$0.48 ²
						\$0.25 ⁸
						\$0.48 ^{1, 2}
						\$0.25 ⁸
Options Transaction						
Charge (non-Penny Symbol)⁷, excluding	\$0.00	\$0.75 ³	\$0.25 ⁸	\$0.25 ⁴	\$0.35 ⁸	\$0.75 ³
						\$0.25 ⁸
						\$0.75 ^{1, 3}
						\$0.25 ⁸

| NDX, [and]
NDXP, and
<u>XND</u>
[Options
Transactions
Charge
NDX and
NDXP⁵] | \$0.00 | \$0.75 | \$0.75 ⁸] |
|---|--------|--------|---------------------|--------|---------------------|--------|---------------------|--------|-----------------------|
| Options
Surcharge in
BKX | N/A | \$0.10 | \$0.10 ⁸ |
| Cabinet
Options | \$0.00 | N/A | \$0.10 ⁸ |

- These fees are per contract.

¹ Firm electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF will be assessed \$0.45.

² Electronic Complex Orders will be assessed \$0.40 per contract.

³ Any member or member organization under Common Ownership with another member or member organization or an Appointed OFP of an Affiliated Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will be assessed \$0.65 per contract.

⁴ Any member or member organization under Common Ownership with another member or member organization or an Appointed MM of an Affiliate Entity that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will be assessed \$0.23 per contract.

⁵ [For transactions in NDX and NDXP, a surcharge of \$0.25 per contract will be assessed to Non-Customers] Reserved.

⁶ A \$0.03 per contract surcharge will be assessed to electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Penny Symbols (excluding SPY). An order that is received by the trading system first in time shall be considered an order adding liquidity and an order that trades against that order shall be considered an order removing liquidity.

⁷ A \$0.12 per contract surcharge will be assessed to Non-Customer electronic Complex Orders that remove liquidity from the Complex Order Book and auctions, excluding PIXL, in Non-Penny Symbols (excluding NDX, [and] NDXP, and XND). An order that is received by the trading system first in time shall be considered an order adding liquidity and an order that trades against that order shall be considered an order removing liquidity.

⁸ Floor transaction fees will apply to any "as of" or "reversal" adjustments for manually processed trades originally submitted electronically or through FBMS.

* * * * *

- Lead Market Makers and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying NDX₂ [and] NDXP, and XND; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). The trading activity of separate Lead Market Maker and Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) will be excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows:

* * * * *

- Firms are subject to a maximum fee of \$75,000 ("Monthly Firm Fee Cap"). Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in this Options 7, Section 4) will be excluded from the Monthly Firm Fee Cap. NDX₂ [and] NDXP, and XND Options Transactions will be excluded from the Monthly Firm Fee Cap. Reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) will be included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap. Member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Monthly Firm Fee Cap.
- The Firm Floor Options Transaction Charges will be waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ("BD-Customer

Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month. NDX₂ [and] NDXP, and XND Options Transactions will be excluded from each of the waivers set forth in the above paragraph.

* * * * *

Strategy Caps:

* * * * *

- Reversal and conversion, jelly roll and box spread strategy executions will not be included in the Monthly Strategy Cap for a Firm. Reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) are included in the Monthly Firm Fee Cap. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) will be excluded from the Monthly Market Maker Cap. NDX₂ [and] NDXP, and XND Options Transactions will be excluded from Strategy Cap pricing.

Marketing Fees

* * * * *

- No Marketing Fees will be assessed on transactions in NDX₂ [or] NDXP, or XND.

* * * * *

Section 5. Index and Singly Listed Options (Includes options overlying FX Options, equities, ETFs, ETNs, and indexes not listed on another exchange)

A. Broad-Based Index Options

The below pricing applies to electronic (simple and complex orders) and floor transactions.

Options Transaction Charges					
Symbol	Customer	Professional	Lead Market Maker and Market Maker	Broker- Dealer	Firm
<u>NDX¹</u>	<u>\$0.00</u>	<u>\$0.75</u>	<u>\$0.75</u>	<u>\$0.75</u>	<u>\$0.75</u>
<u>NDXP¹</u>	<u>\$0.00</u>	<u>\$0.75</u>	<u>\$0.75</u>	<u>\$0.75</u>	<u>\$0.75</u>
<u>XND²</u>	<u>\$0.00</u>	<u>\$0.10</u>	<u>\$0.10</u>	<u>\$0.10</u>	<u>\$0.10</u>

- These fees are per contract.

- Floor transaction fees will apply to any "as of" or "reversal" adjustments for manually processed trades originally submitted electronically or through FBMS.

¹A surcharge for NDX and NDXP of \$0.25 per contract will be assessed to Non-Customers.

²A surcharge for XND of \$0.10 per contract will be assessed to Non-Customers.

[U.S. dollar-settled foreign currency options include XDB, XDE, XDN, XDS, XDA, XDZ and XDC.]

B. Singly Listed Options

* * * * *

C. FX Options: U.S. dollar-settled foreign currency options include XDB, XDE, XDN, XDS, XDA, XDZ and XDC.

* * * * *

Section 6. Other Transaction Fees

A. PIXL Pricing*

*Options overlying NDX₂ [and] NDXP₂ and XND are not subject to Options 7, Section 6[.]A. PIXL Pricing. NDX₂ [and] NDXP₂ and XND transactions in PIXL will be subject to Options 7, Section 5.A[4] pricing.

* * * * *

B. FLEX Transaction Fees

- FLEX Multiply Listed Options:

Customer	\$0.00
Non-Customer	\$0.25

- The Monthly Firm Fee Cap, Monthly Market Maker Cap, Strategy Caps and the Options Surcharge in BKX, NDX₂ [and] NDXP₂ and XND described in Options 7, Sections 4 and 5.A will apply to this Section 6[.].B. No other fees described in Options 7, Section 4 will apply to this Section 6.B.

* * * * *

- FLEX NDX, [and] NDXP, and XND Options: Options 7, Section 5.A[4] pricing will apply.

* * * * *

E. Market Access and Routing Subsidy ("MARS")

* * * * *

MARS Eligible Contracts

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

* * * * *