

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 70

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

File No. * SR 2025 - * 48

Amendment No. (req. for Amendments *)

Filing by Nasdaq PHLX LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

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 *).

Establish Pricing for New Functionality

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 * [Redacted] Last Name * [Redacted]

Title * [Redacted]

E-mail * [Redacted]

Telephone * [Redacted] Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq PHLX LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 09/17/2025

(Title *)

By John Zecca (Name *)

EVP and Chief Legal Officer

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

 Date: 2025.09.17 17:13:49 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-Phlx-2025-48 19b-4.docx

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

Exhibit 1 - Notice of Proposed Rule Change *

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SR-Phlx-2025-48 Exhibit 1.docx

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 Advanced 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 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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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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SR-Phlx-2025-48 Exhibit 5.docx

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Nasdaq Phlx LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to establish fees for new functionality in connection with a technology migration.³

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on November 1, 2025.

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”). 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:



¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ SR-Phlx-2025-44 was filed on September 5, 2025. On September 17, 2025, SR-Phlx-2025-44 was withdrawn and this rule change was filed.

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

a. Purpose

The Exchange proposes to establish pricing related to new functionality that was adopted by the Exchange in connection with a technology migration. Specifically, the Exchange proposes to establish pricing related to its new: (1) electronic FLEX Options functionality;⁴ (2) Facilitation Mechanism;⁵ (3) Solicited Order Mechanism;⁶ and (4) Block Order Mechanism.⁷ Additionally, the Exchange proposes to define several terms in Options 7, Section 1, other conforming changes in Options 7, and a technical amendment. Each change is described below.

Electronic FLEX Options

FLEX Options are customized options contracts that allow investors to tailor contract terms for exchange-listed equity and index options. Today, the Exchange offers FLEX Options on its trading floor as described at Options 8, Section 34 which transactions are subject to the pricing described in Options 7, Section 6 B.

⁴ See Securities Exchange Act Release No. 103759 (August 21, 2025), 90 FR 41636 (August 26, 2025) (SR-Phlx-2025-38) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Electronic FLEX Options Rules). This rule change is immediately effective but not yet implemented.

⁵ The Facilitation Mechanism would permit a Phlx member to execute a transaction wherein the member seeks to facilitate a block-size order it represents as agent (“agency order”), and/or a transaction wherein the member solicited interest to execute against a block-size order it represents as agent (“Facilitation Order”) as described in Options 3, Section 11(b) and (c). This mechanism allows members the flexibility to represent a transaction where the member is facilitating only a portion of the order and has solicited interest from other parties for the other portion of the order. See Securities Exchange Act Release No. 103667 (August 8, 2025), 90 FR 39042 (August 13, 2025) (SR-Phlx-2025-35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend PIXL and Adopt New Auctions) (“Auction Filing”). This rule change is immediately effective but not yet implemented.

The SOM is a process by which a member can attempt to execute orders of 500 or more contracts it represents as agent (the “Agency Order”) against contra orders that it solicited pursuant to Options 3, Section 11(d) and (e). Each order entered into the SOM shall be designated as all-or-none. See Auction Filing.

⁷ The Block Order Mechanism provides a means for handling “block-sized orders” (i.e., orders for fifty (50) contracts or more) pursuant to Options 3, Section 11(a). See Auction Filing.

At this time, the Exchange proposes to establish pricing for electronic FLEX Options. By way of background, FLEX Options will be designed to meet the needs of market participants for greater flexibility in selecting the terms of options within the parameters of the Exchange's rules.⁸ FLEX Options will not be preestablished for trading and will not be listed individually for trading on the Exchange. Rather, market participants will select FLEX Option terms and will be limited by the parameters detailed in Options 3A, Section 3(c) in their selection of those terms. As a result, FLEX Options would allow investors to specify more specific, individualized investment objectives than may be available to them in the standardized options market.

FLEX Options may be submitted through an electronic FLEX Auction, FLEX Price Improvement XL ("FLEX PIXL"), or a FLEX Solicited Order Mechanism ("FLEX SOM").⁹ An electronic FLEX Auction is a one-sided mechanism through which an Exchange member organization may electronically submit for execution an order (which may be a simple or complex order) pursuant to the eligibility requirements in Options 3A, Section 11(b)(1). The FLEX PIXL is a paired auction mechanism pursuant to Options 3A, Section 12 through which an Exchange member may electronically submit for execution an order (which may be a simple or complex order) it represents as agent ("Agency Order") against principal interest or a solicited order(s) (except, if the Agency Order is a simple order, for an order for the account of any FLEX Market Maker with an appointment in the applicable FLEX Option class on the Exchange) (an "Initiating Order"), provided it submits the Agency Order for electronic execution into a FLEX PIXL Auction pursuant to Options 3A, Section 12. The FLEX SOM is a paired auction mechanism pursuant to Options 3A, Section 13 through which an Exchange member (the

⁸ See supra note 3.

⁹ See id.

“Initiating Member”) may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (“Agency Order”) against a solicited order (“Solicited Order”) if it submits the Agency Order for electronic execution into a FLEX SOM Auction pursuant to Options 3A, Section 13.

The Exchange proposes to establish the following per contract pricing for simple and complex order transactions in Options 7, Section 6.B:

Market Participant	Fee for FLEX Auctions	Fee for FLEX PIXL and SOM	Fee for Responses to FLEX PIXL and SOM Orders
Market Maker/Lead Market Maker	\$0.10	\$0.07	\$0.50
Broker-Dealer	\$0.10	\$0.07	\$0.50
Firm	\$0.10	\$0.07	\$0.50
Professional	\$0.10	\$0.07	\$0.50
Customer	\$0.00	\$0.00	\$0.50

The Exchange also proposes at new note 1 of Options 7, Section 6.B that for all executions in FLEX NDX and FLEX XND orders, the applicable index options fees in Options 7, Section 5.A will apply.¹⁰ As such, for FLEX NDX orders, the Exchange will assess Customers¹¹ a \$0.25 per contract fee and Non-Customers¹² a \$0.75 per contract fee for both electronic simple and complex orders pursuant to Options 7, Section 5.A. Additionally, a surcharge of \$0.25 per contract would be assessed to Non-Customers for FLEX NDX orders pursuant to note 1 of Options 7, Section 5, A. A surcharge of \$1.50 per contract will be assessed

¹⁰ “NDX” means A.M. or P.M. settled options on the full value of the Nasdaq 100® Index. “XND” are options on the Nasdaq 100 Micro Index, representing 1/100th of the value of Nasdaq 100 Index.

¹¹ 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)). See Options 7, Section 1(c).

¹² The term “Non-Customer” applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs. See Options 7, Section 1(c).

to electronic simple Non-Customer orders that remove liquidity pursuant to note 3 of Options 7, Section 5.A. A surcharge of \$0.50 per contract will be assessed to all Non-Customer complex executions in NDX pursuant to note 5 of Options 7, Section 5.A. A surcharge of \$0.25 per contract will be assessed to all Customer complex executions in NDX pursuant to note 6 of Options 7, Section 5.A. Finally, a surcharge of \$0.25 per contract will be assessed to all market participants for simple and complex executions in NDX with a premium price of \$25.00 or greater pursuant to note 7 of Options 7, Section 5.A. For FLEX XND orders, the Exchange will not assess Customers a fee and will assess Non-Customers a \$0.10 per contract fee or both electronic simple and complex orders. A surcharge for XND of \$0.10 per contract will be assessed to Non-Customers pursuant to note 2 of Options 7, Section 5. A.¹³

Flex Auction Fees

An Exchange member may electronically submit a FLEX order into an electronic FLEX Auction pursuant to Options 3A, Section 11(b). For the FLEX Auction, the Exchange proposes assessing simple and complex orders a \$0.10 per contract for Market Makers,¹⁴ and Lead Market

¹³ The XND Incentive Program in Options 7, Section 5, B would not apply to FLEX XND Options orders, only the pricing in Options 7, Section 5, A.

¹⁴ 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). A Market Maker includes SQTs and RSQTs as well as Floor Market Makers. The term “Streaming Quote Trader” or “SQT” is defined in Options 1, Section 1(b)(55) as a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. The term “Remote Streaming Quote Trader” or “RSQT” is defined in Options 1, Section 1(b)(49) as a Market Maker that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or “RSQTO,” which may also be referred to as a Remote Market Making Organization (“RMO”), is a member organization in good standing that satisfies the RSQTO readiness requirements in Options 2, Section 1(a). See Options 7, Section 1(c).

Makers,¹⁵ Broker-Dealers,¹⁶ Firms,¹⁷ and Professionals.¹⁸ The Exchange proposes assessing no fees for Customers. Fees apply to the originating and contra order.

FLEX PIXL and SOM Fees

An Exchange member may electronically submit a FLEX order into a FLEX PIXL and FLEX SOM pursuant to Options 3A, Section 12 and Options 3A, Section 13, respectively.

For the FLEX PIXL and FLEX SOM, the Exchange proposes assessing simple and complex orders as \$0.07 per contract for Market Makers, and Lead Market Makers, Broker-Dealers, Firms, and Professionals. The Exchange proposes assessing no fees to Customers. Pursuant to proposed note 2 of Options 7, Section 6.B, the fees will apply to the originating and contra order.

Fees for FLEX PIXL and SOM Responses

Any member other than an Initiating Member may submit responses to a FLEX PIXL and FLEX SOM pursuant to Options 3A, Section 12(c)(5) and Options 3A, Section 13(c)(5), respectively. For responses to a FLEX PIXL and FLEX SOM, the Exchange proposes assessing simple and complex orders a \$0.50 per contract for Market Makers, and Lead Market Makers,

¹⁵ The term “Lead Market Maker” applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 7, Section 1(c).

¹⁶ The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Options 7, Section 1(c).

¹⁷ The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. See Options 7, Section 1(c).

¹⁸ The term “Professional” applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Options 7, Section 1(c).

Broker-Dealers, Firms, Professionals, and Customers. Fees apply to the originating and contra order.

For all executions in electronic FLEX NDX and electronic FLEX XND orders, the applicable index options fees in Options 7, Section 5, A will apply in a FLEX PIXL and FLEX SOM.

The Exchange believes that its proposed electronic FLEX pricing will attract electronic FLEX Orders to the Exchange.

Other Changes

With the addition of pricing for FLEX electronic transaction fees, the Exchange proposes to amend the pricing in Options 7, Section 6, B to retitle the section from “FLEX Transaction Fees” to “FLEX Floor Transaction Fees and FLEX Electronic Transaction Fees” to distinguish FLEX floor and electronic FLEX pricing. Further, the Exchange proposes the insertion of a subtitle in this section of “FLEX Floor Transaction Fees.” Also, the Exchange proposes to amend “FLEX Multiply Listed Options” to instead state “FLEX Floor Multiply Listed Options.” Finally, the Exchange proposes to add “Floor” or “floor” to the current text of the second bullet

after the chart in Options 7, Section 6, B to distinguish FLEX floor and electronic. The existing text would be amended to state,

The Floor FLEX transaction fees for a Firm will be waived for members executing floor facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account. In addition, FLEX transaction fees for a Broker-Dealer will be waived for members executing floor 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 Floor FLEX and non-Floor FLEX transactions) exceeds 10,000 contracts per day in a given month.

Crossing Orders

The Exchange proposes to create a new Options 7, Section 6.F titled "Crossing Orders."

The Exchange proposes to define a "Crossing Order" in Options 7, Section 1(c) as an order executed in the Exchange's Facilitation Mechanism pursuant to Options 3, Section 11(b) or (c) or Solicited Order Mechanism pursuant to Options 3, Section 11(d) or (e). For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism pursuant to Options 3, Section 11(a) are also considered Crossing Orders. The Exchange proposes to state in new Options 7, Section 6.F that, "The below transaction fees apply to Crossing Orders.

Simple Order Fees and Rebates Penny Symbols

Market Participant	Fee for Crossing Orders	Fee for Responses to Crossing Orders	Facilitation and Solicitation Break-up Rebate
Market Maker/Lead Market Maker	\$0.17	\$0.50	N/A
Broker-Dealer	\$0.17	\$0.50	(\$0.20)
Firm	\$0.17	\$0.50	(\$0.20)
Professional	\$0.17	\$0.50	(\$0.20)
Customer	\$0.00	\$0.50	(\$0.20)

Non-Penny Symbols

Market Participant	Fee for Crossing Orders	Fee for Responses to Crossing Orders	Facilitation and Solicitation Break-up Rebate
Market Maker/Lead Market Maker	\$0.17	\$1.10	N/A
Broker-Dealer Firm	\$0.17	\$1.10	(\$0.20)
Professional	\$0.17	\$1.10	(\$0.20)
Customer	\$0.00	\$1.10	(\$0.20)

The Exchange proposes to adopt Penny Symbol and Non-Penny Symbol Fees for Crossing Orders of \$0.17 per contract for Non-Customers. No Penny Symbol or Non-Penny Symbol Fee for Crossing Orders would be assessed to a Customer. These fees would apply to the originating and contra order.¹⁹ The Exchange proposes to define the term “Responses to Crossing Order” at Options 7, Section 1(c) to mean any contra-side interest submitted after the commencement of an auction in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, or Block Order Mechanism. The Exchange proposes to assess all market participants a \$0.50 per contract Fee for Response to Crossing Orders in Penny Symbols. The Exchange proposes to assess all market participants a \$1.10 per contract Fee for Response to Crossing Orders in Non-Penny Symbols. The Exchange proposes to pay a Penny Symbol and Non-Penny Symbol Facilitation and Solicitation Break-up Rebate²⁰ of \$0.20 per contract to all market participants except Market Makers and Lead Market Makers. These rebates will be paid on contracts submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order, except when those contracts trade against pre-existing orders and quotes on the Exchange’s order books. The applicable Fee for Responses to Crossing Orders is applied to

¹⁹ See proposed note 3 of Options 7, Section 6.F.

²⁰ Block Orders are not paired orders.

any contracts for which a rebate is provided.²¹ Additionally, the applicable Fee for Responses to Crossing Orders is applied to any contracts for which a rebate is provided.

The Exchange believes that these proposed fees will attract simple Crossing Orders to the Exchange with a potential for price improving orders.

Next, the Exchange proposes to add a title of “Complex Order Fees and Rebates” to Options 7, Section 6.F, and adopt Crossing Order Penny Symbol and Non-Penny Symbols pricing as follows:

Market Participant	Fee for Crossing Orders	Fee for Responses to Crossing Orders for Penny Symbols	Fee for Responses to Crossing Orders for Non-Penny Symbols	Facilitation and Solicitation Break-up Rebate for Penny Symbols	Facilitation and Solicitation Break-up Rebate for Non-Penny Symbols
Market Maker	\$0.17	\$0.50	\$1.10	N/A	N/A
Broker-Dealer Firm	\$0.17	\$0.50	\$1.10	(\$0.20)	(\$0.20)
Professional	\$0.17	\$0.50	\$1.10	(\$0.20)	(\$0.20)
Customer	\$0.00	\$0.50	\$1.10	(\$0.20)	(\$0.20)

The Exchange proposes to adopt Penny Symbol and Non-Penny Symbol Complex Order Fees for Crossing Orders of \$0.17 per contract for Non-Customers. No Penny Symbol or Non-Penny Symbol Complex Order Fees for Crossing Orders would be assessed to a Customer. These fees would apply to the originating and contra order²² and fees would be charged for all legs.²³ Complex Order Fees for Responses to Crossing Orders for Penny Symbols would be

²¹ See proposed note 4 of Options 7, Section 6.F.

²² See proposed note 5 of Options 7, Section 6.F.

²³ See proposed note 6 of Options 7, Section 6.F.

\$0.50 per contract for all market participants. Complex Order Fees for Responses to Crossing Orders for Non-Penny Symbols would be \$1.10 per contract for all market participants. Rebates would be paid per contract per leg for contracts submitted to Facilitation and Solicitation Mechanisms that do not trade with their contra order, except when those contracts trade against pre-existing orders and quotes on the Exchange's order books. Additionally, the applicable Fees for Responses to Crossing Orders is applied to any contracts for which a rebate is provided.²⁴ The Exchange proposes to pay a Complex Order Penny Symbol and Non-Penny Symbol Facilitation and Solicitation Break-up Rebate²⁵ of \$0.20 per contract to all market participants except Market Makers and Lead Market Makers. Today, any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of a Market Maker that is assigned to the options class.²⁶ Further, any solicited contra orders entered by Members to trade against Agency Orders may not be for the account of a Market Maker that is assigned to the options class.²⁷

The Exchange believes that its proposed pricing for Crossing Orders will attract orders to Phlx's new auction mechanisms.

Other Pricing Changes

The Exchange proposes to amend a technical error in Options 7, Section 1, General Provisions by capitalizing the word "exchange." The Exchange also proposes to add three new defined terms in Options 7, Section 1. First, the Exchange proposes to define a "Complex Order" and a "Simple Order" to clarify the Exchange's Pricing Schedule with respect to these

²⁴ See proposed note 7 of Options 7, Section 6.F.

²⁵ Block Orders are not paired orders.

²⁶ See Supplementary Material .01 to Options 3, Section 11.

²⁷ See Supplementary Material .03 to Options 3, Section 11.

terms. A “Complex Order” would be defined as an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, as provided in Options 3, Section 14, as well as Stock-Option Orders.²⁸ A “Simple Order” would be defined as an order that consists of only a single option series and is not submitted with a stock leg.

Second, the Exchange proposes to define an existing term, “order exposure alert.” The Exchange proposes to state in Options 7, Section 1(c) that an “order exposure alert” is an order that is broadcast to market participants as described in Options 5, Section 4(a), Order Routing. Order exposure alert only applies to Simple Orders. The Exchange believes these new definitions will add context to the Exchange’s current Pricing Schedule.

The Exchange proposes a change to Options 7, Section 3 to the bullet that currently states, “A non-Complex electronic auction includes the Quote Exhaust²⁹ auction and, for purposes of these fees, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (“COLA”). The Exchange recently removed the COLA auction from its rules.³⁰ In light of that recent rule change the Exchange proposes to revise the current language of that bullet to state, “a non-Complex electronic auction would be the opening process. A Complex electronic auction includes, but is not limited to, an Exposure Complex Auction pursuant to Supplementary Material .01 to Options 3, Section 14.” This new

²⁸ The Exchange recently amend Options 3, Section 14 related to Complex Orders to define the term Stock-Options Orders and remove the COLA functionality. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s Complex Order Functionality). This rule change is immediately effective but not yet implemented.

²⁹ The Exchange removed the Quote Exhaust functionality. See Securities Exchange Act Release No. 101989 (December 30, 2024), 89 FR 106888 (December 30, 2024) (SR-Phlx-2024-71). SR-Phlx-2024-71 is effective but not yet operative. SR-Phlx-2024-71 would be operative at the same time as this rule change as they are both part of the same technology migration.

³⁰ See supra note 27.

text will align to new Options 3, Section 14 functionality.³¹ The same change is proposed to the same language in Options 7, Section 4.

Further, with respect to an Exposure Complex Auction pursuant to Supplementary Material .01 to Options 3, Section 14, the Exchange proposes to note in Options 7, Section 3, Part B that “During an Exposure Complex Auction pursuant to Supplementary Material .01 to Options 3, Section 14, the originating side of the auction order will be assessed the applicable Fee for Adding Liquidity or rebate, and the contra side will be assessed the applicable Fee for Removing Liquidity or rebate.” Also, the Exchange proposes to note with respect to the Marketing Fee, that additionally, no Marketing Fees will be assessed on the contra side order that executed against the originating order in a Exposure Complex Auction pursuant to Supplementary Material .01 to Options 3, Section 14. An Exposure Auction is automatically initiated when a member submits an eligible complex order that is marked for price improvement.³² Because Exposure Complex Auctions are initiated by Complex Orders entered on the Complex Order book, they are assessed the pricing applicable to all other Complex Orders executed on the complex order book. Specifically, the Exchange proposes to treat the originating side of Exposure Complex Auction orders as adding liquidity and the contra side as taking liquidity for the purpose of determining applicable fees and rebates in Options 7, Section 3. Because the Exchange assesses the Marketing Fee when the contra-party to the execution is a Customer and where the Market Maker is adding liquidity, the Exchange proposes to not assess the Marketing Fee against the contra-side of the Exposure Complex Auction that removes liquidity in Penny Symbols. Today, Marketing Fees are not assessed on transactions which

³¹ See id.

³² See Phlx Supplementary Material .01 to Options 3, Section 14.

execute against an order for which the Exchange broadcasts an order exposure alert in Penny Symbols.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³⁴ 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.”³⁵

Likewise, in NetCoalition v. Securities and Exchange Commission³⁶ (“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.³⁷ As the court emphasized, the Commission “intended in Regulation NMS that

³³ 15 U.S.C. 78f(b).

³⁴ 15 U.S.C. 78f(b)(4) and (5).

³⁵ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

³⁶ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

³⁷ See NetCoalition, at 534 - 535.

‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.’³⁸

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’”³⁹

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

Electronic FLEX Options

The Exchange believes that the proposed electronic FLEX Options pricing is reasonable because the fees remain competitive with fees of other options exchanges and will attract electronic FLEX order flow to Phlx. The Exchange’s proposed fees for the FLEX Auction, FLEX PIXL, and FLEX SOM are comparable with those of ISE’s electronic FLEX Auction,

³⁸ Id. at 537.

³⁹ 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)).

FLEX PIXL and FLEX SOM.⁴⁰ For the FLEX Auction, the Exchange proposes assessing \$0.10 per contract for Non-Customers. The Exchange proposes assessing no fees for Customers for the FLEX Auction. For the FLEX PIXL and FLEX SOM, the Exchange proposes assessing \$0.07 per contract for Non-Customers. The Exchange proposes assessing no fees for Customers for the FLEX PIXL and FLEX SOM and the fees apply to the originating and contra order. For responses to the FLEX PIXL and FLEX SOM, the Exchange proposes assessing \$0.50 per contract to all market participants. These fees are reasonable because they are competitive with market dynamics and consider the price improvement opportunities of the order mechanisms. In particular, the Exchange believes that it is reasonable to assess a slightly lower fee of \$0.07 per contract for Non-Customers in FLEX PIXL and FLEX SOM compared to the \$0.10 per contract fee for Non-Customers in electronic FLEX Auctions because the Exchange seeks to incentivize more activity in FLEX PIXL and FLEX SOM for potential price improvement.

Further, the Exchange believes that the fees are an equitable allocation and are not unfairly discriminatory. The fees for the FLEX Auction, FLEX PIXL and FLEX SOM, and the responses to the FLEX PIXL and FLEX SOM will apply in a like manner to all similarly situated members except for Customers, who will be assessed no fees in the FLEX Auction and FLEX PIXL and FLEX SOM. The Exchange believes that it is equitable and not unfairly discriminatory to assess more favorable pricing for Customers as this order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants who may interact with this order flow. The Exchange believes that the differential between the proposed Fees for FLEX PIXL and SOM of \$0.07 per contract for Non-Customers and \$0.00 for

⁴⁰ See Nasdaq ISE, LLC's Pricing Schedule at Options 7, Section 6, D.

Customers in both Penny and Non-Penny Symbols for simple and complex orders as compared to the proposed Fees for Responses to FLEX PIXL and SOM Orders of \$0.50 per contract for all participants for Penny and Non-Penny Symbols for simple and complex orders is equitable and not unfairly discriminatory. The lower proposed Fees for FLEX PIXL and SOM should encourage members to initiate these auctions in Penny and Non-Penny Symbols in simple and complex orders. Members responding to these auctions would be assessed the same or higher proposed Fees for Responses to FLEX PIXL and SOM Orders as compared to the fees to remove liquidity from the order book for simple and complex orders.⁴¹ While the proposed Fees for Responses to FLEX PIXL and SOM Orders are the same or higher, the Exchange believes that these fees for simple and complex orders in Penny and Non-Penny Symbols remain competitive with ISE⁴² and will continue to encourage members to initiate FLEX PIXL and SOM auctions in Penny and Non-Penny Symbols in the simple and complex order books. The liquidity the Exchange is able to attract in these auctions provides other members an opportunity to engage with these auction orders and participate in the trade by breaking-up the auction order or being allocated in the auction. Members would not be able to respond to the auctions if such auctions never commence.

⁴¹ The Exchange assesses an Options Transaction Charge of \$0.48 per contract to Professionals, Broker-Dealers, and Firms, an Options Transaction Charge of \$0.22 per contract to Lead Market Makers and Market Makers, and no fees to Customers, in Penny Symbols, to remove liquidity from the simple and complex order books. The Exchange assesses an Options Transaction Charge of \$0.75 per contract to Professionals, Broker-Dealers and Firms, an Options Transaction Charge of \$0.25 per contract to Lead Market Makers and Market Makers, and no fees to Customers, in Non-Penny Symbols, to remove liquidity from the simple and complex order books. See Options 7, Section 4. The Exchange assesses Non-Customers a \$0.48 per contract Fee for Removing Liquidity and assesses Customers a \$0.41 per contract Fee for Removing Liquidity in SPY in the simple order book in Penny and Non-Penny Symbols. The Exchange assesses Professionals, Broker-Dealers and Firms and a Fee for Removing Liquidity of \$0.50 per contract, Lead Market Makers and Market Makers a Fee for Removing Liquidity of \$0.43 per contract, and no fees to Customers to remove SPY liquidity from the complex order book in Penny and Non-Penny Symbols. See Options 7, Section 3.

⁴² See ISE's Pricing Schedule at Options 7, Sections 3 and 4.

As it relates to the FLEX NDX and FLEX XND pricing described above, the Exchange believes that its proposal is reasonable because it will assess the same fees for FLEX NDX and FLEX XND orders as it does today for non-FLEX NDX and non-FLEX XND orders. Similar to non-FLEX NDX and non-FLEX XND, the Exchange seeks to recoup the operational costs for listing proprietary products.⁴³ 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.⁴⁴ Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact non-standard NDX or non-standard XND or separately execute PowerShares QQQ Trust (“QQQ”) options.⁴⁵ Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100[®] Index.⁴⁶ When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

The Exchange believes that the proposed FLEX NDX and FLEX XND fees are equitable and not unfairly discriminatory because Non-Customers will be assessed the same level of pricing across the board whereas Customers will be assessed lower fees or no fees. The Exchange believes it is equitable and not unfairly discriminatory to assess lower fees for Customers because Customer order flow enhances liquidity on the Exchange to the benefit of all

⁴³ For 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.

⁴⁴ See pricing for Russell 2000 Index (“RUT”) on Chicago Board Options Exchange, Incorporated’s (“CBOE”) Fees Schedule and on CBOE C2 Exchange, Inc.’s (“C2”) Fees Schedule.

⁴⁵ QQQ is an exchange-traded fund based on the Nasdaq 100[®] Index.

⁴⁶ QQQ options overlie the same index as NDX, namely the Nasdaq 100[®] Index. This relationship between QQQ options and NDX options is similar to the relationship between RUT and the iShares Russell 2000 Index (“IWM”), which is the ETF on RUT.

market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants who may interact with this order flow.

Crossing Orders

The Exchange's proposed pricing for Simple and Complex Crossing Orders is reasonable in several respects. The Exchange's proposed Fees for Crossing Orders of \$0.17 per contract for Non-Customers are competitive and will attract orders to these new mechanisms on Phlx. ISE has comparable pricing for the same auctions.⁴⁷ The Exchange's proposed Fees for Responses to Crossing Orders of \$0.50 per contract for all market participants is reasonable as the Exchange believes that these fees are competitive and will attract orders to these new mechanisms on Phlx. ISE has comparable pricing for the same auctions.⁴⁸ Further, the Exchange proposes to incentivize other market participants to interact with Simple and Complex Order Facilitation and Solicited Orders by paying a Break-up Rebate to all market participants except Market Makers and Lead Market Makers of \$0.20 per contract. The Exchange believes that these Break-up rebates will encourage use of the Facilitation and Solicitation Mechanisms thereby creating order interaction for these auctions. Specifically, the Exchange believes that the proposed rebates will encourage increased originating simple and complex Market Maker/Lead Market Maker, Broker-Dealer, Firm and Customer order flow to the Facilitation and Solicitation Mechanisms, thereby potentially increasing the initiation of and volume executed through such auctions. Additional auction order flow provides market participants with additional trading opportunities at potentially improved prices. The Exchange further believes that the proposed Facilitation and

⁴⁷ See ISE's Pricing Schedule at Options 7, Sections 3 and 4. Of note, ISE's Professional Fees for Crossing Orders related to the Solicited Order Mechanism are \$0.00 per contract.

⁴⁸ See ISE's Pricing Schedule at Options 7, Sections 3 and 4.

Solicitation Break-up rebates are set at reasonable rates because they are aligned with pricing on ISE, which has the same auctions.⁴⁹

The Exchange's proposed pricing for Simple and Complex Fees for Crossing Orders is equitable and not unfairly discriminatory. The Exchange believes that it is equitable and not unfairly discriminatory to assess Customers no Fees for Crossing Orders, thereby offering Customers more favorable pricing, because Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants who may interact with this order flow. Assessing uniform Simple and Complex Order Fees for Crossing Orders to Non-Customers is equitable and not unfairly discriminatory. The Exchange's proposal to assess all market participants uniform Simple and Complex Order Fees for Responding to Crossing Orders in Penny Symbols of \$0.50 per contract and in Non-Penny Symbols of \$1.10 per contract is equitable and not unfairly discriminatory. The Exchange believes that the differential between the proposed Fees for Crossing Order (the fees that apply to the originating and contra-side orders) of \$0.17 per contract for Non-Customers and \$0.00 for Customers in both Penny and Non-Penny Symbols for simple orders as compared to the proposed Fees for Responses to Crossing Orders of \$0.50 per contract for all participants in Penny Symbols and \$1.10 per contract for Non-Penny Symbols for simple orders is equitable and not unfairly discriminatory. Additionally, the Exchange believes that the differential between the proposed Fees for Crossing Orders (the fees that apply to the originating and contra-side orders) of \$0.17 per contract for Non-Customers and \$0.00 for Customers in both Penny and Non-Penny Symbols for complex orders as compared to the proposed Fees for Responses to Crossing Orders of \$0.50 per contract

⁴⁹ See ISE's Pricing Schedule at Options 7, Sections 3 and 4.

for all participants in Penny Symbols and \$1.10 per contract for all participants in Non-Penny Symbols for complex orders is equitable and not unfairly discriminatory. The lower Fees for Crossing Orders should encourage members to initiate Facilitation Mechanisms, Complex Facilitation Mechanisms, Solicitation Mechanisms, Complex Solicitation Mechanisms and Block Orders in Penny and Non-Penny Symbols in simple and complex orders. Members responding to these auctions would be assessed the same or higher proposed Fees for Responses to Crossing Orders as compared to the fees to remove liquidity from the order book for simple and complex orders.⁵⁰ While the Fees for Responses to Crossing Orders are the same or higher, the Exchange believes these fees for simple and complex orders in Penny and Non-Penny Symbols remain competitive with ISE⁵¹ and will continue to encourage members to initiate Facilitation Mechanisms, Complex Facilitation Mechanisms, Solicitation Mechanisms, Complex Solicitation Mechanisms and Block Orders in Penny and Non-Penny Symbols in the simple and complex order books. The liquidity the Exchange is able to attract in these auctions provides other members an opportunity to engage with auction orders and participate in the trade by breaking-up the auction order or being allocated in the auction. Members would not be able to respond to the auctions if such auctions never commence. Finally, the Exchange proposed Break-up rebates of \$0.20 per contract for all market participants, except Market Makers and Lead Markets, in Simple and Complex Order Facilitation and Solicitation auctions in Penny and Non-Penny Symbols is equitable and not unfairly discriminatory because the proposed rebates will apply equally to all non-Market Maker originating orders submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra orders (except when those originating

⁵⁰ See supra note 41.

⁵¹ See ISE's Pricing Schedule at Options 7, Sections 3 and 4.

contracts trade against pre-existing orders and quotes on the Exchange’s order books). While Market Makers will not receive the Facilitation and Solicitation Break-up rebates, the Exchange believes that the application of the rebate is equitable and not unfairly discriminatory because Market Makers have certain limitations by rule. Any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of a Market Maker that is assigned to the options class.⁵² Further, any solicited contra orders entered by Members to trade against Agency Orders may not be for the account of a Market Maker that is assigned to the options class.⁵³

Other Pricing Changes

The Exchange’s proposal to amend a technical error in Options 7, Section 1, General Provisions by capitalizing the word “exchange” is non-substantive. The Exchange’s proposal to add three new defined terms in Options 7, Section 1 for “Complex Order,” “Simple Order,” and “order exposure alert” is reasonable, equitable and not unfairly discriminatory because it will add more context to the current Pricing Schedule but it will not amend how the current pricing is assessed or paid.

The Exchange’s proposal to amend Options 7, Sections 3 and 4 to change the rule text to remove functionality that no longer exists⁵⁴ and add language around functionality that was recently adopted and would apply as a non-Complex electronic auction and Complex electronic auction⁵⁵ is reasonable, equitable and not unfairly discriminatory because it will align with recent

⁵² See Supplementary Material .01 to Options 3, Section 11.

⁵³ See Supplementary Material .03 to Options 3, Section 11.

⁵⁴ See supra notes 27 and 28.

⁵⁵ See supra note 27.

changes to the Rulebook and provide context around the new pricing that the Exchange is adopting with the current proposal.

Finally, for purposes of Options 7, Section 3, Part B, treating the originating side of the Exposure Complex Orders as the maker and the contra side as the taker is reasonable, equitable and not unfairly discriminatory because in this scenario the Market Maker is removing liquidity from the order book and the Exchange would handle all orders in the same manner. Also, not applying the Marketing Fee to the contra side order of an Exposure Complex Order that executed against the originating order is reasonable, equitable and not unfairly discriminatory because the Exchange assesses the Marketing Fee when the contra-party to the execution is a Customer and where the Market Maker is adding liquidity. The Exchange would not assess the Marketing Fee uniformly in this manner. Today, Marketing Fees are not assessed on transactions that execute against an order for which the Exchange broadcasts an order exposure alert in Penny Symbols.

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, and because market participants may

readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-market Competition

Electronic FLEX Options

Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. The Exchange will apply the same fees to all similarly situated members except for Customers in the FLEX Auction and FLEX PIXL and FLEX SOM considering that Customers are historically assessed the lowest fees compared to other market participants. Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants who may interact with this order flow. The Exchange believes that the differential between the proposed Fees for FLEX PIXL and SOM of \$0.07 per contract for Non-Customers and \$0.00 for Customers in both Penny and Non-Penny Symbols for simple and complex auctions as compared to the proposed Fees for Responses to FLEX PIXL and SOM Orders of \$0.50 per contract for Penny and Non-Penny Symbols for simple and complex orders does not impose an undue burden on competition. The lower Fees for FLEX PIXL and SOM described above should encourage members to initiate these auctions in Penny and Non-Penny Symbols in simple and complex orders. Members responding to these auctions would be assessed the same or higher proposed Fees for Responses to FLEX PIXL and SOM Orders as compared to the fees to remove liquidity from the order book for simple and complex orders.⁵⁶ While the Fees for Responses to FLEX PIXL and SOM Orders are the same or higher, the Exchange believes that

⁵⁶ See supra note 41.

these fees for simple and complex orders in Penny and Non-Penny Symbols remain competitive with ISE⁵⁷ and will continue to encourage members to initiate FLEX PIXL and SOM auctions in Penny and Non-Penny Symbols in the simple and complex order books. The liquidity the Exchange is able to attract in the form of these auctions provides other members an opportunity to engage with auction orders and participate in the trade by breaking-up the auction order or being allocated in the auction. Members would not be able to respond to the auctions if such auctions never commence. Nasdaq does not believe that the proposed fee changes place an unnecessary burden on competition.

Crossing Orders

The Exchange's proposed pricing for Simple and Complex Fees for Crossing Orders does not impose an undue burden on competition. Customers will be assessed no Fees for Crossing Orders, thereby offering Customers more favorable pricing, because Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants who may interact with this order flow. Assessing uniform Simple and Complex Order Fees for Crossing Orders to Non-Customers does not impose an undue burden on competition. The Exchange's proposal to assess all market participants uniform Simple and Complex Order Fees for Responding to Crossing Orders in Penny Symbols of \$0.50 per contract and in Non-Penny Symbols of \$1.10 per contract does not impose an undue burden on competition.

The Exchange believes that the differential between the proposed Fees for Crossing Order (the fees that apply to the originating and contra-side orders) of \$0.17 per contract for Non-Customers and \$0.00 for Customers in both Penny and Non-Penny Symbols for simple

⁵⁷ See ISE's Pricing Schedule at Options 7, Sections 3 and 4.

orders as compared to the proposed Fees for Responses to Crossing Orders of \$0.50 per contract for all participants in Penny Symbols and \$1.10 per contract for all participants in Non-Penny Symbols for simple orders does not impose an undue burden on competition. Additionally, the Exchange believes that the differential between the proposed Fees for Crossing Order (the fees that apply to the originating and contra-side orders) of \$0.17 per contract for Non-Customers and \$0.00 for Customers in both Penny and Non-Penny Symbols for complex orders as compared to the proposed Fees for Responses to Crossing Orders of \$0.50 per contract for all participants in Penny Symbols and \$1.10 per contract for all participants in Non-Penny Symbols for complex orders does not impose an undue burden on competition. The lower Fees for Crossing Orders described above should encourage members to initiate Facilitation Mechanisms, Complex Facilitation Mechanisms, Solicitation Mechanisms, Complex Solicitation Mechanisms and Block Orders in Penny and Non-Penny Symbols in simple and complex orders. Members responding to these auctions would be assessed the same or higher proposed Fees for Responses to Crossing Orders as compared to the fees to remove liquidity from the order book for simple and complex orders.⁵⁸ While the Fees for Responses to Crossing Orders are the same or higher, the Exchange believes these fees for simple and complex orders in Penny and Non-Penny Symbols remain competitive with ISE⁵⁹ and will continue to encourage members to initiate Facilitation Mechanisms, Complex Facilitation Mechanisms, Solicitation Mechanisms, Complex Solicitation Mechanisms and Block Orders in Penny and Non-Penny Symbols in the simple and complex order books. The liquidity the Exchange is able to attract in these auctions provides other members an opportunity to engage with auction orders and participate in the trade by breaking-

⁵⁸ See supra note 41.

⁵⁹ See ISE's Pricing Schedule at Options 7, Sections 3 and 4.

up the auction order or being allocated in the auction. Members would not be able to respond to the auctions if such auctions never commence. Finally, the Exchange proposed Break-up rebates of \$0.20 per contract for all market participants, except Market Makers and Lead Markets, in Simple and Complex Order Facilitation and Solicitation auctions in Penny and Non-Penny Symbols does not impose an undue burden on competition because the proposed rebates will apply equally to all non-Market Maker originating orders submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra orders (except when those originating contracts trade against pre-existing orders and quotes on the Exchange's order books). While Market Makers will not receive the Facilitation and Solicitation Break-up rebates, the Exchange believes that the application of the rebates does not impose an undue burden on competition because Market Makers have certain limitations by rule. Any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of a Market Maker that is assigned to the options class.⁶⁰ Further, any solicited contra orders entered by Members to trade against Agency Orders may not be for the account of a Market Maker that is assigned to the options class.⁶¹

Other Pricing Changes

The Exchange's proposal to add three new defined terms in Options 7, Section 1 for "Complex Order," "Simple Order," and "order exposure alert" does not impose an undue burden on competition, rather it will add more context to the current Pricing Schedule but it will not amend how the current pricing is assessed or paid. The Exchange's proposal to amend Options 7, Sections 3 and 4 to change the rule text to remove functionality that no longer exists⁶² and add

⁶⁰ See Supplementary Material .01 to Options 3, Section 11.

⁶¹ See Supplementary Material .03 to Options 3, Section 11.

⁶² See supra notes 27 and 28.

language around functionality that was recently adopted and would apply as a non-Complex electronic auction and Complex electronic auction⁶³ does not impose an undue burden on competition, rather it will align with recent changes to the Rulebook and provide context around the new pricing that the Exchange is adopting with the current proposal.

For purposes of Options 7, Section 3, Part B, treating the originating side of the Exposure Complex Orders as the maker and the contra side as the taker does not impose an undue burden on competition because the Exchange would handle all orders in the same manner. Also, not applying the Marketing Fee to the contra side order of an Exposure Complex Order that executed against the originating order does not impose an undue burden on competition because the Exchange would not assess the Marketing Fee uniformly in this manner.

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,⁶⁴ 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.

⁶³ See supra note 27.

⁶⁴ 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

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION****[Release No. 34 ; File No. SR-Phlx-2025-48]****Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish Pricing for New Functionality**

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 September 17, 2025, 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 establish fees for new functionality in connection with a technology migration.³

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on November 1, 2025.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ SR-Phlx-2025-44 was filed on September 5, 2025. On September 17, 2025, SR-Phlx-2025-44 was withdrawn and this rule change was filed.

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 proposes to establish pricing related to new functionality that was adopted by the Exchange in connection with a technology migration. Specifically, the Exchange proposes to establish pricing related to its new: (1) electronic FLEX Options functionality;⁴ (2) Facilitation Mechanism;⁵ (3) Solicited Order Mechanism;⁶ and (4) Block Order Mechanism.⁷

⁴ See Securities Exchange Act Release No. 103759 (August 21, 2025), 90 FR 41636 (August 26, 2025) (SR-Phlx-2025-38) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Electronic FLEX Options Rules). This rule change is immediately effective but not yet implemented.

⁵ The Facilitation Mechanism would permit a Phlx member to execute a transaction wherein the member seeks to facilitate a block-size order it represents as agent (“agency order”), and/or a transaction wherein the member solicited interest to execute against a block-size order it represents as agent (“Facilitation Order”) as described in Options 3, Section 11(b) and (c). This mechanism allows members the flexibility to represent a transaction where the member is facilitating only a portion of the order and has solicited interest from other parties for the other portion of the order. See Securities Exchange Act Release No. 103667 (August 8, 2025), 90 FR 39042 (August 13, 2025) (SR-Phlx-2025-35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend PIXL and Adopt New Auctions) (“Auction Filing”). This rule change is immediately effective but not yet implemented.

The SOM is a process by which a member can attempt to execute orders of 500 or more contracts it represents as agent (the “Agency Order”) against contra orders that it solicited pursuant to Options 3, Section 11(d) and (e). Each order entered into the SOM shall be designated as all-or-none. See Auction Filing.

⁷ The Block Order Mechanism provides a means for handling “block-sized orders” (i.e., orders for fifty (50) contracts or more) pursuant to Options 3, Section 11(a). See Auction Filing.

Additionally, the Exchange proposes to define several terms in Options 7, Section 1, other conforming changes in Options 7, and a technical amendment. Each change is described below.

Electronic FLEX Options

FLEX Options are customized options contracts that allow investors to tailor contract terms for exchange-listed equity and index options. Today, the Exchange offers FLEX Options on its trading floor as described at Options 8, Section 34 which transactions are subject to the pricing described in Options 7, Section 6 B.

At this time, the Exchange proposes to establish pricing for electronic FLEX Options. By way of background, FLEX Options will be designed to meet the needs of market participants for greater flexibility in selecting the terms of options within the parameters of the Exchange's rules.⁸ FLEX Options will not be preestablished for trading and will not be listed individually for trading on the Exchange. Rather, market participants will select FLEX Option terms and will be limited by the parameters detailed in Options 3A, Section 3(c) in their selection of those terms. As a result, FLEX Options would allow investors to specify more specific, individualized investment objectives than may be available to them in the standardized options market.

FLEX Options may be submitted through an electronic FLEX Auction, FLEX Price Improvement XL ("FLEX PIXL"), or a FLEX Solicited Order Mechanism ("FLEX SOM").⁹ An electronic FLEX Auction is a one-sided mechanism through which an Exchange member organization may electronically submit for execution an order (which may be a simple or complex order) pursuant to the eligibility requirements in Options 3A, Section 11(b)(1). The FLEX PIXL is a paired auction mechanism pursuant to Options 3A, Section 12 through which an

⁸ See supra note 3.

⁹ See id.

Exchange member may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (“Agency Order”) against principal interest or a solicited order(s) (except, if the Agency Order is a simple order, for an order for the account of any FLEX Market Maker with an appointment in the applicable FLEX Option class on the Exchange) (an “Initiating Order”), provided it submits the Agency Order for electronic execution into a FLEX PIXL Auction pursuant to Options 3A, Section 12. The FLEX SOM is a paired auction mechanism pursuant to Options 3A, Section 13 through which an Exchange member (the “Initiating Member”) may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (“Agency Order”) against a solicited order (“Solicited Order”) if it submits the Agency Order for electronic execution into a FLEX SOM Auction pursuant to Options 3A, Section 13.

The Exchange proposes to establish the following per contract pricing for simple and complex order transactions in Options 7, Section 6.B:

Market Participant	Fee for FLEX Auctions	Fee for FLEX PIXL and SOM	Fee for Responses to FLEX PIXL and SOM Orders
Market Maker/Lead Market Maker	\$0.10	\$0.07	\$0.50
Broker-Dealer	\$0.10	\$0.07	\$0.50
Firm	\$0.10	\$0.07	\$0.50
Professional	\$0.10	\$0.07	\$0.50
Customer	\$0.00	\$0.00	\$0.50

The Exchange also proposes at new note 1 of Options 7, Section 6.B that for all executions in FLEX NDX and FLEX XND orders, the applicable index options fees in Options 7, Section 5.A will apply.¹⁰ As such, for FLEX NDX orders, the Exchange will assess

¹⁰ “NDX” means A.M. or P.M. settled options on the full value of the Nasdaq 100® Index. “XND” are options on the Nasdaq 100 Micro Index, representing 1/100th of the value of Nasdaq 100 Index.

Customers¹¹ a \$0.25 per contract fee and Non-Customers¹² a \$0.75 per contract fee for both electronic simple and complex orders pursuant to Options 7, Section 5.A. Additionally, a surcharge of \$0.25 per contract would be assessed to Non-Customers for FLEX NDX orders pursuant to note 1 of Options 7, Section 5, A. A surcharge of \$1.50 per contract will be assessed to electronic simple Non-Customer orders that remove liquidity pursuant to note 3 of Options 7, Section 5.A. A surcharge of \$0.50 per contract will be assessed to all Non-Customer complex executions in NDX pursuant to note 5 of Options 7, Section 5.A. A surcharge of \$0.25 per contract will be assessed to all Customer complex executions in NDX pursuant to note 6 of Options 7, Section 5.A. Finally, a surcharge of \$0.25 per contract will be assessed to all market participants for simple and complex executions in NDX with a premium price of \$25.00 or greater pursuant to note 7 of Options 7, Section 5.A. For FLEX XND orders, the Exchange will not assess Customers a fee and will assess Non-Customers a \$0.10 per contract fee or both electronic simple and complex orders. A surcharge for XND of \$0.10 per contract will be assessed to Non-Customers pursuant to note 2 of Options 7, Section 5.A.¹³

Flex Auction Fees

An Exchange member may electronically submit a FLEX order into an electronic FLEX Auction pursuant to Options 3A, Section 11(b). For the FLEX Auction, the Exchange proposes

¹¹ 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)). See Options 7, Section 1(c).

¹² The term “Non-Customer” applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs. See Options 7, Section 1(c).

¹³ The XND Incentive Program in Options 7, Section 5, B would not apply to FLEX XND Options orders, only the pricing in Options 7, Section 5, A.

assessing simple and complex orders a \$0.10 per contract for Market Makers,¹⁴ and Lead Market Makers,¹⁵ Broker-Dealers,¹⁶ Firms,¹⁷ and Professionals.¹⁸ The Exchange proposes assessing no fees for Customers. Fees apply to the originating and contra order.

FLEX PIXL and SOM Fees

An Exchange member may electronically submit a FLEX order into a FLEX PIXL and FLEX SOM pursuant to Options 3A, Section 12 and Options 3A, Section 13, respectively.

For the FLEX PIXL and FLEX SOM, the Exchange proposes assessing simple and complex orders a \$0.07 per contract for Market Makers, and Lead Market Makers, Broker-Dealers, Firms, and Professionals. The Exchange proposes assessing no fees to Customers. Pursuant to proposed note 2 of Options 7, Section 6.B, the fees will apply to the originating and contra order.

¹⁴ 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). A Market Maker includes SQTs and RSQTs as well as Floor Market Makers. The term “Streaming Quote Trader” or “SQT” is defined in Options 1, Section 1(b)(55) as a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. The term “Remote Streaming Quote Trader” or “RSQT” is defined in Options 1, Section 1(b)(49) as a Market Maker that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or “RSQTO,” which may also be referred to as a Remote Market Making Organization (“RMO”), is a member organization in good standing that satisfies the RSQTO readiness requirements in Options 2, Section 1(a). See Options 7, Section 1(c).

¹⁵ The term “Lead Market Maker” applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 7, Section 1(c).

¹⁶ The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Options 7, Section 1(c).

¹⁷ The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. See Options 7, Section 1(c).

¹⁸ The term “Professional” applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Options 7, Section 1(c).

Fees for FLEX PIXL and SOM Responses

Any member other than an Initiating Member may submit responses to a FLEX PIXL and FLEX SOM pursuant to Options 3A, Section 12(c)(5) and Options 3A, Section 13(c)(5), respectively. For responses to a FLEX PIXL and FLEX SOM, the Exchange proposes assessing simple and complex orders a \$0.50 per contract for Market Makers, and Lead Market Makers, Broker-Dealers, Firms, Professionals, and Customers. Fees apply to the originating and contra order.

For all executions in electronic FLEX NDX and electronic FLEX XND orders, the applicable index options fees in Options 7, Section 5, A will apply in a FLEX PIXL and FLEX SOM.

The Exchange believes that its proposed electronic FLEX pricing will attract electronic FLEX Orders to the Exchange.

Other Changes

With the addition of pricing for FLEX electronic transaction fees, the Exchange proposes to amend the pricing in Options 7, Section 6, B to retitle the section from “FLEX Transaction Fees” to “FLEX Floor Transaction Fees and FLEX Electronic Transaction Fees” to distinguish FLEX floor and electronic FLEX pricing. Further, the Exchange proposes the insertion of a subtitle in this section of “FLEX Floor Transaction Fees.” Also, the Exchange proposes to amend “FLEX Multiply Listed Options” to instead state “FLEX Floor Multiply Listed Options.” Finally, the Exchange proposes to add “Floor” or “floor” to the current text of the second bullet

after the chart in Options 7, Section 6, B to distinguish FLEX floor and electronic. The existing text would be amended to state,

The Floor FLEX transaction fees for a Firm will be waived for members executing floor facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account. In addition, FLEX transaction fees for a Broker-Dealer will be waived for members executing floor 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 Floor FLEX and non-Floor FLEX transactions) exceeds 10,000 contracts per day in a given month.

Crossing Orders

The Exchange proposes to create a new Options 7, Section 6.F titled "Crossing Orders." The Exchange proposes to define a "Crossing Order" in Options 7, Section 1(c) as an order executed in the Exchange's Facilitation Mechanism pursuant to Options 3, Section 11(b) or (c) or Solicited Order Mechanism pursuant to Options 3, Section 11(d) or (e). For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism pursuant to Options 3, Section 11(a) are also considered Crossing Orders. The Exchange proposes to state in new Options 7, Section 6.F that, "The below transaction fees apply to Crossing Orders.

Simple Order Fees and Rebates Penny Symbols

Market Participant	Fee for Crossing Orders	Fee for Responses to Crossing Orders	Facilitation and Solicitation Break-up Rebate
Market Maker/Lead Market Maker	\$0.17	\$0.50	N/A
Broker-Dealer	\$0.17	\$0.50	(\$0.20)
Firm	\$0.17	\$0.50	(\$0.20)
Professional	\$0.17	\$0.50	(\$0.20)
Customer	\$0.00	\$0.50	(\$0.20)

Non-Penny Symbols

Market Participant	Fee for Crossing Orders	Fee for Responses to Crossing Orders	Facilitation and Solicitation Break-up Rebate
Market Maker/Lead Market Maker	\$0.17	\$1.10	N/A
Broker-Dealer Firm	\$0.17	\$1.10	(\$0.20)
Professional	\$0.17	\$1.10	(\$0.20)
Customer	\$0.00	\$1.10	(\$0.20)

The Exchange proposes to adopt Penny Symbol and Non-Penny Symbol Fees for Crossing Orders of \$0.17 per contract for Non-Customers. No Penny Symbol or Non-Penny Symbol Fee for Crossing Orders would be assessed to a Customer. These fees would apply to the originating and contra order.¹⁹ The Exchange proposes to define the term “Responses to Crossing Order” at Options 7, Section 1(c) to mean any contra-side interest submitted after the commencement of an auction in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, or Block Order Mechanism. The Exchange proposes to assess all market participants a \$0.50 per contract Fee for Response to Crossing Orders in Penny Symbols. The Exchange proposes to assess all market participants a \$1.10 per contract Fee for Response to Crossing Orders in Non-Penny Symbols. The Exchange proposes to pay a Penny Symbol and Non-Penny Symbol Facilitation and Solicitation Break-up Rebate²⁰ of \$0.20 per contract to all market participants except Market Makers and Lead Market Makers. These rebates will be paid on contracts submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order, except when those contracts trade against pre-existing orders and quotes on

¹⁹ See proposed note 3 of Options 7, Section 6.F.

²⁰ Block Orders are not paired orders.

the Exchange's order books. The applicable Fee for Responses to Crossing Orders is applied to any contracts for which a rebate is provided.²¹ Additionally, the applicable Fee for Responses to Crossing Orders is applied to any contracts for which a rebate is provided.

The Exchange believes that these proposed fees will attract simple Crossing Orders to the Exchange with a potential for price improving orders.

Next, the Exchange proposes to add a title of "Complex Order Fees and Rebates" to Options 7, Section 6.F, and adopt Crossing Order Penny Symbol and Non-Penny Symbols pricing as follows:

Market Participant	Fee for Crossing Orders	Fee for Responses to Crossing Orders for Penny Symbols	Fee for Responses to Crossing Orders for Non-Penny Symbols	Facilitation and Solicitation Break-up Rebate for Penny Symbols	Facilitation and Solicitation Break-up Rebate for Non-Penny Symbols
Market Maker	\$0.17	\$0.50	\$1.10	N/A	N/A
Broker-Dealer Firm	\$0.17	\$0.50	\$1.10	(\$0.20)	(\$0.20)
Professional	\$0.17	\$0.50	\$1.10	(\$0.20)	(\$0.20)
Customer	\$0.00	\$0.50	\$1.10	(\$0.20)	(\$0.20)

The Exchange proposes to adopt Penny Symbol and Non-Penny Symbol Complex Order Fees for Crossing Orders of \$0.17 per contract for Non-Customers. No Penny Symbol or Non-Penny Symbol Complex Order Fees for Crossing Orders would be assessed to a Customer. These fees would apply to the originating and contra order²² and fees would be charged for all

²¹ See proposed note 4 of Options 7, Section 6.F.

²² See proposed note 5 of Options 7, Section 6.F.

legs.²³ Complex Order Fees for Responses to Crossing Orders for Penny Symbols would be \$0.50 per contract for all market participants. Complex Order Fees for Responses to Crossing Orders for Non-Penny Symbols would be \$1.10 per contract for all market participants. Rebates would be paid per contract per leg for contracts submitted to Facilitation and Solicitation Mechanisms that do not trade with their contra order, except when those contracts trade against pre-existing orders and quotes on the Exchange's order books. Additionally, the applicable Fees for Responses to Crossing Orders is applied to any contracts for which a rebate is provided.²⁴ The Exchange proposes to pay a Complex Order Penny Symbol and Non-Penny Symbol Facilitation and Solicitation Break-up Rebate²⁵ of \$0.20 per contract to all market participants except Market Makers and Lead Market Makers. Today, any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of a Market Maker that is assigned to the options class.²⁶ Further, any solicited contra orders entered by Members to trade against Agency Orders may not be for the account of a Market Maker that is assigned to the options class.²⁷

The Exchange believes that its proposed pricing for Crossing Orders will attract orders to Phlx's new auction mechanisms.

Other Pricing Changes

The Exchange proposes to amend a technical error in Options 7, Section 1, General Provisions by capitalizing the word "exchange." The Exchange also proposes to add three new

²³ See proposed note 6 of Options 7, Section 6.F.

²⁴ See proposed note 7 of Options 7, Section 6.F.

²⁵ Block Orders are not paired orders.

²⁶ See Supplementary Material .01 to Options 3, Section 11.

²⁷ See Supplementary Material .03 to Options 3, Section 11.

defined terms in Options 7, Section 1. First, the Exchange proposes to define a “Complex Order” and a “Simple Order” to clarify the Exchange’s Pricing Schedule with respect to these terms. A “Complex Order” would be defined as an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, as provided in Options 3, Section 14, as well as Stock-Option Orders.²⁸ A “Simple Order” would be defined as an order that consists of only a single option series and is not submitted with a stock leg. Second, the Exchange proposes to define an existing term, “order exposure alert.” The Exchange proposes to state in Options 7, Section 1(c) that an “order exposure alert” is an order that is broadcast to market participants as described in Options 5, Section 4(a), Order Routing. Order exposure alert only applies to Simple Orders. The Exchange believes these new definitions will add context to the Exchange’s current Pricing Schedule.

The Exchange proposes a change to Options 7, Section 3 to the bullet that currently states, “A non-Complex electronic auction includes the Quote Exhaust²⁹ auction and, for purposes of these fees, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (“COLA”). The Exchange recently removed the COLA auction from its rules.³⁰ In light of that recent rule change the Exchange proposes to revise the current language of that bullet to state, “a non-Complex electronic auction would be the opening process. A Complex electronic auction includes, but is not limited to, an Exposure

²⁸ The Exchange recently amend Options 3, Section 14 related to Complex Orders to define the term Stock-Options Orders and remove the COLA functionality. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s Complex Order Functionality). This rule change is immediately effective but not yet implemented.

²⁹ The Exchange removed the Quote Exhaust functionality. See Securities Exchange Act Release No. 101989 (December 30, 2024), 89 FR 106888 (December 30, 2024) (SR-Phlx-2024-71). SR-Phlx-2024-71 is effective but not yet operative. SR-Phlx-2024-71 would be operative at the same time as this rule change as they are both part of the same technology migration.

³⁰ See supra note 27.

Complex Auction pursuant to Supplementary Material .01 to Options 3, Section 14.” This new text will align to new Options 3, Section 14 functionality.³¹ The same change is proposed to the same language in Options 7, Section 4.

Further, with respect to an Exposure Complex Auction pursuant to Supplementary Material .01 to Options 3, Section 14, the Exchange proposes to note in Options 7, Section 3, Part B that “During an Exposure Complex Auction pursuant to Supplementary Material .01 to Options 3, Section 14, the originating side of the auction order will be assessed the applicable Fee for Adding Liquidity or rebate, and the contra side will be assessed the applicable Fee for Removing Liquidity or rebate.” Also, the Exchange proposes to note with respect to the Marketing Fee, that additionally, no Marketing Fees will be assessed on the contra side order that executed against the originating order in a Exposure Complex Auction pursuant to Supplementary Material .01 to Options 3, Section 14. An Exposure Auction is automatically initiated when a member submits an eligible complex order that is marked for price improvement.³² Because Exposure Complex Auctions are initiated by Complex Orders entered on the Complex Order book, they are assessed the pricing applicable to all other Complex Orders executed on the complex order book. Specifically, the Exchange proposes to treat the originating side of Exposure Complex Auction orders as adding liquidity and the contra side as taking liquidity for the purpose of determining applicable fees and rebates in Options 7, Section 3. Because the Exchange assesses the Marketing Fee when the contra-party to the execution is a Customer and where the Market Maker is adding liquidity, the Exchange proposes to not assess the Marketing Fee against the contra-side of the Exposure Complex Auction that removes

³¹ See id.

³² See Phlx Supplementary Material .01 to Options 3, Section 14.

liquidity in Penny Symbols. Today, Marketing Fees are not assessed on transactions which execute against an order for which the Exchange broadcasts an order exposure alert in Penny Symbols.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³⁴ 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.”³⁵

Likewise, in NetCoalition v. Securities and Exchange Commission³⁶ (“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

³³ 15 U.S.C. 78f(b).

³⁴ 15 U.S.C. 78f(b)(4) and (5).

³⁵ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

³⁶ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

approach.³⁷ 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.”³⁸

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’”³⁹

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

Electronic FLEX Options

The Exchange believes that the proposed electronic FLEX Options pricing is reasonable because the fees remain competitive with fees of other options exchanges and will attract electronic FLEX order flow to Phlx. The Exchange’s proposed fees for the FLEX Auction,

³⁷ See NetCoalition, at 534 - 535.

³⁸ Id. at 537.

³⁹ 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)).

FLEX PIXL, and FLEX SOM are comparable with those of ISE's electronic FLEX Auction, FLEX PIXL and FLEX SOM.⁴⁰ For the FLEX Auction, the Exchange proposes assessing \$0.10 per contract for Non-Customers. The Exchange proposes assessing no fees for Customers for the FLEX Auction. For the FLEX PIXL and FLEX SOM, the Exchange proposes assessing \$0.07 per contract for Non-Customers. The Exchange proposes assessing no fees for Customers for the FLEX PIXL and FLEX SOM and the fees apply to the originating and contra order. For responses to the FLEX PIXL and FLEX SOM, the Exchange proposes assessing \$0.50 per contract to all market participants. These fees are reasonable because they are competitive with market dynamics and consider the price improvement opportunities of the order mechanisms. In particular, the Exchange believes that it is reasonable to assess a slightly lower fee of \$0.07 per contract for Non-Customers in FLEX PIXL and FLEX SOM compared to the \$0.10 per contract fee for Non-Customers in electronic FLEX Auctions because the Exchange seeks to incentivize more activity in FLEX PIXL and FLEX SOM for potential price improvement.

Further, the Exchange believes that the fees are an equitable allocation and are not unfairly discriminatory. The fees for the FLEX Auction, FLEX PIXL and FLEX SOM, and the responses to the FLEX PIXL and FLEX SOM will apply in a like manner to all similarly situated members except for Customers, who will be assessed no fees in the FLEX Auction and FLEX PIXL and FLEX SOM. The Exchange believes that it is equitable and not unfairly discriminatory to assess more favorable pricing for Customers as this order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants who may interact with this order flow. The Exchange believes that the differential between the proposed

⁴⁰ See Nasdaq ISE, LLC's Pricing Schedule at Options 7, Section 6, D.

Fees for FLEX PIXL and SOM of \$0.07 per contract for Non-Customers and \$0.00 for Customers in both Penny and Non-Penny Symbols for simple and complex orders as compared to the proposed Fees for Responses to FLEX PIXL and SOM Orders of \$0.50 per contract for all participants for Penny and Non-Penny Symbols for simple and complex orders is equitable and not unfairly discriminatory. The lower proposed Fees for FLEX PIXL and SOM should encourage members to initiate these auctions in Penny and Non-Penny Symbols in simple and complex orders. Members responding to these auctions would be assessed the same or higher proposed Fees for Responses to FLEX PIXL and SOM Orders as compared to the fees to remove liquidity from the order book for simple and complex orders.⁴¹ While the proposed Fees for Responses to FLEX PIXL and SOM Orders are the same or higher, the Exchange believes that these fees for simple and complex orders in Penny and Non-Penny Symbols remain competitive with ISE⁴² and will continue to encourage members to initiate FLEX PIXL and SOM auctions in Penny and Non-Penny Symbols in the simple and complex order books. The liquidity the Exchange is able to attract in these auctions provides other members an opportunity to engage with these auction orders and participate in the trade by breaking-up the auction order or being

⁴¹ The Exchange assesses an Options Transaction Charge of \$0.48 per contract to Professionals, Broker-Dealers, and Firms, an Options Transaction Charge of \$0.22 per contract to Lead Market Makers and Market Makers, and no fees to Customers, in Penny Symbols, to remove liquidity from the simple and complex order books. The Exchange assesses an Options Transaction Charge of \$0.75 per contract to Professionals, Broker-Dealers and Firms, an Options Transaction Charge of \$0.25 per contract to Lead Market Makers and Market Makers, and no fees to Customers, in Non-Penny Symbols, to remove liquidity from the simple and complex order books. See Options 7, Section 4. The Exchange assesses Non-Customers a \$0.48 per contract Fee for Removing Liquidity and assesses Customers a \$0.41 per contract Fee for Removing Liquidity in SPY in the simple order book in Penny and Non-Penny Symbols. The Exchange assesses Professionals, Broker-Dealers and Firms and a Fee for Removing Liquidity of \$0.50 per contract, Lead Market Makers and Market Makers a Fee for Removing Liquidity of \$0.43 per contract, and no fees to Customers to remove SPY liquidity from the complex order book in Penny and Non-Penny Symbols. See Options 7, Section 3.

⁴² See ISE's Pricing Schedule at Options 7, Sections 3 and 4.

allocated in the auction. Members would not be able to respond to the auctions if such auctions never commence.

As it relates to the FLEX NDX and FLEX XND pricing described above, the Exchange believes that its proposal is reasonable because it will assess the same fees for FLEX NDX and FLEX XND orders as it does today for non-FLEX NDX and non-FLEX XND orders. Similar to non-FLEX NDX and non-FLEX XND, the Exchange seeks to recoup the operational costs for listing proprietary products.⁴³ 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.⁴⁴ Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact non-standard NDX or non-standard XND or separately execute PowerShares QQQ Trust (“QQQ”) options.⁴⁵ Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100[®] Index.⁴⁶ When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

The Exchange believes that the proposed FLEX NDX and FLEX XND fees are equitable and not unfairly discriminatory because Non-Customers will be assessed the same level of pricing across the board whereas Customers will be assessed lower fees or no fees. The

⁴³ For 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.

⁴⁴ See pricing for Russell 2000 Index (“RUT”) on Chicago Board Options Exchange, Incorporated’s (“CBOE”) Fees Schedule and on CBOE C2 Exchange, Inc.’s (“C2”) Fees Schedule.

⁴⁵ QQQ is an exchange-traded fund based on the Nasdaq 100[®] Index.

⁴⁶ QQQ options overlie the same index as NDX, namely the Nasdaq 100[®] Index. This relationship between QQQ options and NDX options is similar to the relationship between RUT and the iShares Russell 2000 Index (“IWM”), which is the ETF on RUT.

Exchange believes it is equitable and not unfairly discriminatory to assess lower fees for Customers because Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants who may interact with this order flow.

Crossing Orders

The Exchange's proposed pricing for Simple and Complex Crossing Orders is reasonable in several respects. The Exchange's proposed Fees for Crossing Orders of \$0.17 per contract for Non-Customers are competitive and will attract orders to these new mechanisms on Phlx. ISE has comparable pricing for the same auctions.⁴⁷ The Exchange's proposed Fees for Responses to Crossing Orders of \$0.50 per contract for all market participants is reasonable as the Exchange believes that these fees are competitive and will attract orders to these new mechanisms on Phlx. ISE has comparable pricing for the same auctions.⁴⁸ Further, the Exchange proposes to incentivize other market participants to interact with Simple and Complex Order Facilitation and Solicited Orders by paying a Break-up Rebate to all market participants except Market Makers and Lead Market Makers of \$0.20 per contract. The Exchange believes that these Break-up rebates will encourage use of the Facilitation and Solicitation Mechanisms thereby creating order interaction for these auctions. Specifically, the Exchange believes that the proposed rebates will encourage increased originating simple and complex Market Maker/Lead Market Maker, Broker-Dealer, Firm and Customer order flow to the Facilitation and Solicitation Mechanisms, thereby potentially increasing the initiation of and volume executed through such auctions. Additional auction order flow provides market participants with additional trading opportunities at

⁴⁷ See ISE's Pricing Schedule at Options 7, Sections 3 and 4. Of note, ISE's Professional Fees for Crossing Orders related to the Solicited Order Mechanism are \$0.00 per contract.

⁴⁸ See ISE's Pricing Schedule at Options 7, Sections 3 and 4.

potentially improved prices. The Exchange further believes that the proposed Facilitation and Solicitation Break-up rebates are set at reasonable rates because they are aligned with pricing on ISE, which has the same auctions.⁴⁹

The Exchange's proposed pricing for Simple and Complex Fees for Crossing Orders is equitable and not unfairly discriminatory. The Exchange believes that it is equitable and not unfairly discriminatory to assess Customers no Fees for Crossing Orders, thereby offering Customers more favorable pricing, because Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants who may interact with this order flow. Assessing uniform Simple and Complex Order Fees for Crossing Orders to Non-Customers is equitable and not unfairly discriminatory. The Exchange's proposal to assess all market participants uniform Simple and Complex Order Fees for Responding to Crossing Orders in Penny Symbols of \$0.50 per contract and in Non-Penny Symbols of \$1.10 per contract is equitable and not unfairly discriminatory. The Exchange believes that the differential between the proposed Fees for Crossing Order (the fees that apply to the originating and contra-side orders) of \$0.17 per contract for Non-Customers and \$0.00 for Customers in both Penny and Non-Penny Symbols for simple orders as compared to the proposed Fees for Responses to Crossing Orders of \$0.50 per contract for all participants in Penny Symbols and \$1.10 per contract for Non-Penny Symbols for simple orders is equitable and not unfairly discriminatory. Additionally, the Exchange believes that the differential between the proposed Fees for Crossing Orders (the fees that apply to the originating and contra-side orders) of \$0.17 per contract for Non-Customers and \$0.00 for Customers in both Penny and Non-Penny Symbols for complex

⁴⁹ See ISE's Pricing Schedule at Options 7, Sections 3 and 4.

orders as compared to the proposed Fees for Responses to Crossing Orders of \$0.50 per contract for all participants in Penny Symbols and \$1.10 per contract for all participants in Non-Penny Symbols for complex orders is equitable and not unfairly discriminatory. The lower Fees for Crossing Orders should encourage members to initiate Facilitation Mechanisms, Complex Facilitation Mechanisms, Solicitation Mechanisms, Complex Solicitation Mechanisms and Block Orders in Penny and Non-Penny Symbols in simple and complex orders. Members responding to these auctions would be assessed the same or higher proposed Fees for Responses to Crossing Orders as compared to the fees to remove liquidity from the order book for simple and complex orders.⁵⁰ While the Fees for Responses to Crossing Orders are the same or higher, the Exchange believes these fees for simple and complex orders in Penny and Non-Penny Symbols remain competitive with ISE⁵¹ and will continue to encourage members to initiate Facilitation Mechanisms, Complex Facilitation Mechanisms, Solicitation Mechanisms, Complex Solicitation Mechanisms and Block Orders in Penny and Non-Penny Symbols in the simple and complex order books. The liquidity the Exchange is able to attract in these auctions provides other members an opportunity to engage with auction orders and participate in the trade by breaking-up the auction order or being allocated in the auction. Members would not be able to respond to the auctions if such auctions never commence. Finally, the Exchange proposed Break-up rebates of \$0.20 per contract for all market participants, except Market Makers and Lead Markets, in Simple and Complex Order Facilitation and Solicitation auctions in Penny and Non-Penny Symbols is equitable and not unfairly discriminatory because the proposed rebates will apply equally to all non-Market Maker originating orders submitted to the Facilitation and Solicited

⁵⁰ See supra note 41.

⁵¹ See ISE's Pricing Schedule at Options 7, Sections 3 and 4.

Order Mechanisms that do not trade with their contra orders (except when those originating contracts trade against pre-existing orders and quotes on the Exchange's order books). While Market Makers will not receive the Facilitation and Solicitation Break-up rebates, the Exchange believes that the application of the rebate is equitable and not unfairly discriminatory because Market Makers have certain limitations by rule. Any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of a Market Maker that is assigned to the options class.⁵² Further, any solicited contra orders entered by Members to trade against Agency Orders may not be for the account of a Market Maker that is assigned to the options class.⁵³

Other Pricing Changes

The Exchange's proposal to amend a technical error in Options 7, Section 1, General Provisions by capitalizing the word "exchange" is non-substantive. The Exchange's proposal to add three new defined terms in Options 7, Section 1 for "Complex Order," "Simple Order," and "order exposure alert" is reasonable, equitable and not unfairly discriminatory because it will add more context to the current Pricing Schedule but it will not amend how the current pricing is assessed or paid.

The Exchange's proposal to amend Options 7, Sections 3 and 4 to change the rule text to remove functionality that no longer exists⁵⁴ and add language around functionality that was recently adopted and would apply as a non-Complex electronic auction and Complex electronic auction⁵⁵ is reasonable, equitable and not unfairly discriminatory because it will align with recent

⁵² See Supplementary Material .01 to Options 3, Section 11.

⁵³ See Supplementary Material .03 to Options 3, Section 11.

⁵⁴ See supra notes 27 and 28.

⁵⁵ See supra note 27.

changes to the Rulebook and provide context around the new pricing that the Exchange is adopting with the current proposal.

Finally, for purposes of Options 7, Section 3, Part B, treating the originating side of the Exposure Complex Orders as the maker and the contra side as the taker is reasonable, equitable and not unfairly discriminatory because in this scenario the Market Maker is removing liquidity from the order book and the Exchange would handle all orders in the same manner. Also, not applying the Marketing Fee to the contra side order of an Exposure Complex Order that executed against the originating order is reasonable, equitable and not unfairly discriminatory because the Exchange assesses the Marketing Fee when the contra-party to the execution is a Customer and where the Market Maker is adding liquidity. The Exchange would not assess the Marketing Fee uniformly in this manner. Today, Marketing Fees are not assessed on transactions that execute against an order for which the Exchange broadcasts an order exposure alert in Penny Symbols.

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, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-market Competition

Electronic FLEX Options

Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. The Exchange will apply the same fees to all similarly situated members except for Customers in the FLEX Auction and FLEX PIXL and FLEX SOM considering that Customers are historically assessed the lowest fees compared to other market participants. Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants who may interact with this order flow. The Exchange believes that the differential between the proposed Fees for FLEX PIXL and SOM of \$0.07 per contract for Non-Customers and \$0.00 for Customers in both Penny and Non-Penny Symbols for simple and complex auctions as compared to the proposed Fees for Responses to FLEX PIXL and SOM Orders of \$0.50 per contract for Penny and Non-Penny Symbols for simple and complex orders does not impose an undue burden on competition. The lower Fees for FLEX PIXL and SOM described above should encourage members to initiate these auctions in Penny and Non-Penny Symbols in simple and complex orders. Members responding to these auctions would be assessed the same or higher proposed Fees for Responses to FLEX PIXL and SOM Orders as compared to the fees to remove liquidity from the order book for simple and complex orders.⁵⁶ While the Fees for

⁵⁶ See supra note 41.

Responses to FLEX PIXL and SOM Orders are the same or higher, the Exchange believes that these fees for simple and complex orders in Penny and Non-Penny Symbols remain competitive with ISE⁵⁷ and will continue to encourage members to initiate FLEX PIXL and SOM auctions in Penny and Non-Penny Symbols in the simple and complex order books. The liquidity the Exchange is able to attract in the form of these auctions provides other members an opportunity to engage with auction orders and participate in the trade by breaking-up the auction order or being allocated in the auction. Members would not be able to respond to the auctions if such auctions never commence. Nasdaq does not believe that the proposed fee changes place an unnecessary burden on competition.

Crossing Orders

The Exchange's proposed pricing for Simple and Complex Fees for Crossing Orders does not impose an undue burden on competition. Customers will be assessed no Fees for Crossing Orders, thereby offering Customers more favorable pricing, because Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants who may interact with this order flow. Assessing uniform Simple and Complex Order Fees for Crossing Orders to Non-Customers does not impose an undue burden on competition. The Exchange's proposal to assess all market participants uniform Simple and Complex Order Fees for Responding to Crossing Orders in Penny Symbols of \$0.50 per contract and in Non-Penny Symbols of \$1.10 per contract does not impose an undue burden on competition.

The Exchange believes that the differential between the proposed Fees for Crossing Order (the fees that apply to the originating and contra-side orders) of \$0.17 per contract for

⁵⁷ See ISE's Pricing Schedule at Options 7, Sections 3 and 4.

Non-Customers and \$0.00 for Customers in both Penny and Non-Penny Symbols for simple orders as compared to the proposed Fees for Responses to Crossing Orders of \$0.50 per contract for all participants in Penny Symbols and \$1.10 per contract for all participants in Non-Penny Symbols for simple orders does not impose an undue burden on competition. Additionally, the Exchange believes that the differential between the proposed Fees for Crossing Order (the fees that apply to the originating and contra-side orders) of \$0.17 per contract for Non-Customers and \$0.00 for Customers in both Penny and Non-Penny Symbols for complex orders as compared to the proposed Fees for Responses to Crossing Orders of \$0.50 per contract for all participants in Penny Symbols and \$1.10 per contract for all participants in Non-Penny Symbols for complex orders does not impose an undue burden on competition. The lower Fees for Crossing Orders described above should encourage members to initiate Facilitation Mechanisms, Complex Facilitation Mechanisms, Solicitation Mechanisms, Complex Solicitation Mechanisms and Block Orders in Penny and Non-Penny Symbols in simple and complex orders. Members responding to these auctions would be assessed the same or higher proposed Fees for Responses to Crossing Orders as compared to the fees to remove liquidity from the order book for simple and complex orders.⁵⁸ While the Fees for Responses to Crossing Orders are the same or higher, the Exchange believes these fees for simple and complex orders in Penny and Non-Penny Symbols remain competitive with ISE⁵⁹ and will continue to encourage members to initiate Facilitation Mechanisms, Complex Facilitation Mechanisms, Solicitation Mechanisms, Complex Solicitation Mechanisms and Block Orders in Penny and Non-Penny Symbols in the simple and complex order books. The liquidity the Exchange is able to attract in these auctions provides other

⁵⁸ See supra note 41.

⁵⁹ See ISE's Pricing Schedule at Options 7, Sections 3 and 4.

members an opportunity to engage with auction orders and participate in the trade by breaking-up the auction order or being allocated in the auction. Members would not be able to respond to the auctions if such auctions never commence. Finally, the Exchange proposed Break-up rebates of \$0.20 per contract for all market participants, except Market Makers and Lead Markets, in Simple and Complex Order Facilitation and Solicitation auctions in Penny and Non-Penny Symbols does not impose an undue burden on competition because the proposed rebates will apply equally to all non-Market Maker originating orders submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra orders (except when those originating contracts trade against pre-existing orders and quotes on the Exchange's order books). While Market Makers will not receive the Facilitation and Solicitation Break-up rebates, the Exchange believes that the application of the rebates does not impose an undue burden on competition because Market Makers have certain limitations by rule. Any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of a Market Maker that is assigned to the options class.⁶⁰ Further, any solicited contra orders entered by Members to trade against Agency Orders may not be for the account of a Market Maker that is assigned to the options class.⁶¹

Other Pricing Changes

The Exchange's proposal to add three new defined terms in Options 7, Section 1 for "Complex Order," "Simple Order," and "order exposure alert" does not impose an undue burden on competition, rather it will add more context to the current Pricing Schedule but it will not amend how the current pricing is assessed or paid. The Exchange's proposal to amend Options

⁶⁰ See Supplementary Material .01 to Options 3, Section 11.

⁶¹ See Supplementary Material .03 to Options 3, Section 11.

7, Sections 3 and 4 to change the rule text to remove functionality that no longer exists⁶² and add language around functionality that was recently adopted and would apply as a non-Complex electronic auction and Complex electronic auction⁶³ does not impose an undue burden on competition, rather it will align with recent changes to the Rulebook and provide context around the new pricing that the Exchange is adopting with the current proposal.

For purposes of Options 7, Section 3, Part B, treating the originating side of the Exposure Complex Orders as the maker and the contra side as the taker does not impose an undue burden on competition because the Exchange would handle all orders in the same manner. Also, not applying the Marketing Fee to the contra side order of an Exposure Complex Order that executed against the originating order does not impose an undue burden on competition because the Exchange would not assess the Marketing Fee uniformly in this manner.

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.⁶⁴

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,

⁶² See supra notes 27 and 28.

⁶³ See supra note 27.

⁶⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2025-48 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-2025-48. This file number should be included on the subject line if email 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 website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2025-48 and should be submitted on or

before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁵

Sherry R. Haywood,

Assistant Secretary.

⁶⁵ 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

(a) The exchange calculates fees on a trade date basis.

Policy for amending billing information: corrections submitted after trade date and prior to the issuance of an invoice by the [e]Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation. Only members may submit trade corrections.

* * * * *

(c) For purposes of assessing options fees and paying rebates, the following references should serve as guidance.

* * * * *

The term “**Common Ownership**” shall mean members or member organizations under 75% common ownership or control.

The term “**Complex Order**” shall mean an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, as provided in Options 3, Section 14, as well as Stock-Option Orders.

The term “**Crossing Order**” shall mean an order executed in the Facilitation Mechanism pursuant to Options 3, Section 11(b) or (c) or Solicited Order Mechanism pursuant to Options 3, Section 11(d) or (e). For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism pursuant to Options 3, Section 11(a) are also considered Crossing Orders.

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)).

* * * * *

The term "**order exposure alert**" is an order that is broadcast to market participants as described in Options 5, Section 4(a), Order Routing. Order exposure alert only applies to Simple Orders.

The term "**PIXL Auction Order**" is a two-sided, paired order, comprised of a PIXL Order and an Initiating Order.

* * * * *

The term "**Remote Streaming Quote Trader**" is defined in Options 1, Section 1(b)(49) as a Market Maker that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or "RSQTO," which may also be referred to as a Remote Market Making Organization ("RMO"), is a member organization in good standing that satisfies the RSQTO readiness requirements in Options 2, Section 1(a).

The term "**Responses to Crossing Order**" shall mean any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, or Block Order Mechanism.

The term "**Simple Order**" shall mean an order that consists of only a single option series and is not submitted with a stock leg.

* * * * *

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

With respect to Section 3 of this Options 7 Pricing Schedule, the order that is received by the trading system first in time shall be considered an order adding liquidity and an order that trades against that order shall be considered an order removing liquidity, except with respect to orders that trigger an order exposure alert. Customer volume attributable to this section will be included in the calculation of Customer volume in Multiply Listed Options that are electronically-delivered and executed for purposes of the Customer Rebate Program in Options 7, Section 2. However, the rebates defined in Options 7, Section 2 will not apply to electronic executions in SPY.

* * * * *

Part B. Complex Order

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

- Complex Order Fees for Removing Liquidity, applicable to Lead Market Makers and Market Makers, will be decreased by \$0.02 per contract when the Lead Market Maker or Market Maker transacts against a Customer Order directed to that Lead Market Maker or Market Maker for execution.
- Simple Orders that are executed against the individual components of Complex Orders will be assessed the fees and rebates in Part A. However, the individual components of such a Complex Order will be assessed the fees in Part B.
- Customers will be paid a rebate of \$0.45 per contract and Non-Customers will be assessed a fee of \$0.50 per contract for executions against an order for which the Exchange broadcasts an order exposure alert in SPY.
- Customers will be assessed a \$0.15 per contract surcharge to the extent that they execute the individual components of their Complex Orders in SPY against Market Maker or Lead Market Maker quotes that are resting on the Simple Order Book.
- The Exchange will assess a stock handling fee of \$0.0010 per share (capped at \$50 per trade) for the stock leg of stock-option orders executed against other stock-option orders in the Complex Order Book.
- During an Exposure Complex Auction pursuant to Supplementary Material .01 to Options 3, Section 14, the originating side of the auction order will be assessed the applicable Fee for Adding Liquidity or rebate and the contra side will be assessed the applicable Fee for Removing Liquidity or rebate.

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

* * * * *

- For purposes of these fee, [A]a non-Complex electronic auction [includes the Quote Exhaust auction and, for purposes of these fees,] would be the opening process. A Complex electronic auction includes, but is not limited to, [the Complex Order Live Auction ("COLA")]an Exposure Complex Auction pursuant to Supplementary Material .01 to Options 3, Section 14.
- Customer executions that occur as part of a Complex electronic auction will be assessed \$0.00 per contract.
- Customer executions that occur as part of a non-Complex electronic auction will be assessed \$0.00 per contract.

* * * * *

Section 4. Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A)

* * * * *

Monthly Market Maker Cap

- 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 broad-based index options symbols listed within Options 7, Section 5.A; 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:

Fee per contract

\$0.05 per contract Fee for Adding Liquidity in Penny Symbols

\$0.18 per contract Fee for Removing Liquidity in Penny Symbols

\$0.18 per contract in Non-Penny Symbols

\$0.18 per contract in a non-Complex electronic auction, which includes[including the Quote Exhaust auction and,] for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, [the Complex Order

Live Auction ("COLA")] an Exposure Complex Auction pursuant to Supplementary Material .01 to Options 3, Section 14. Transactions which execute against an order for which the Exchange broadcast an order exposure alert or Exposure Complex Auction in an electronic auction will be subject to this fee.

Monthly Firm Fee Cap and Floor Facilitation

* * * * *

Broker-Dealer Transaction Cap

- Each Broker-Dealer Floor Options Transaction Charge will be capped at \$15,000 per transaction (including Floor FLEX and Cabinet Options Transaction Charges).

* * * * *

Marketing Fees

* * * * *

- No Marketing Fees will be assessed on transactions which execute against an order for which the Exchange broadcast an order exposure alert in Penny Symbols. Additionally, no Marketing Fees will be assessed on the contra side order that executed against the originating order in a Exposure Complex Auction pursuant to Supplementary Material .01 to Options 3, Section 14.

* * * * *

Section 6. Other Transaction Fees

* * * * *

B. FLEX Floor Transaction Fees and FLEX Electronic Transaction Fees

FLEX Floor Transaction Fees

- FLEX Floor 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, described in Options 7, Section 4 will apply to this Section 6.B. No other fees described in Options 7, Section 4 will apply to this Section 6.B.
- The Floor FLEX transaction fees for a Firm will be waived for members executing floor facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account. In addition, FLEX transaction fees for a Broker-Dealer will be waived for members executing floor 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 Floor FLEX and non-Floor FLEX transactions) exceeds 10,000 contracts per day in a given month.
- FLEX Singly Listed Options: Options 7, Section 5 pricing will apply.
- FLEX Options in broad-based index options symbols within Options 7, Section 5.A: Options 7, Section 5.A pricing will apply.

FLEX Electronic Transaction Fees⁽¹⁾

<u>Market Participant</u>	<u>Fee for FLEX Auctions</u>	<u>Fee for FLEX PIXL and SOM⁽²⁾</u>	<u>Fee for Responses to FLEX PIXL and SOM Orders</u>
<u>Market Maker/Lead Market Maker</u>	<u>\$0.10</u>	<u>\$0.07</u>	<u>\$0.50</u>
<u>Broker-Dealer</u>	<u>\$0.10</u>	<u>\$0.07</u>	<u>\$0.50</u>
<u>Firm</u>	<u>\$0.10</u>	<u>\$0.07</u>	<u>\$0.50</u>
<u>Professional</u>	<u>\$0.10</u>	<u>\$0.07</u>	<u>\$0.50</u>
<u>Customer</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.50</u>

(1) Fees are per contract and apply to simple and complex orders. For all executions in electronic FLEX NDX and electronic FLEX XND orders, the applicable index options fees in Options 7, Section 5.A will apply.

(2) Fees apply to the originating and contra order.

* * * * *

F. Crossing Orders

The below transaction fees apply to Crossing Orders.

Simple Order Fees and Rebates

Penny Symbols

<u>Market Participant</u>	<u>Fee for Crossing Orders</u> <small>(3)</small>	<u>Fee for Responses to Crossing Orders</u>	<u>Facilitation and Solicitation Break-up Rebate</u> ⁽⁴⁾
<u>Market Maker/Lead Market Maker</u>	<u>\$0.17</u>	<u>\$0.50</u>	<u>N/A</u>
<u>Broker-Dealer</u>	<u>\$0.17</u>	<u>\$0.50</u>	<u>(\$0.20)</u>
<u>Firm</u>	<u>\$0.17</u>	<u>\$0.50</u>	<u>(\$0.20)</u>
<u>Professional</u>	<u>\$0.17</u>	<u>\$0.50</u>	<u>(\$0.20)</u>
<u>Customer</u>	<u>\$0.00</u>	<u>\$0.50</u>	<u>(\$0.20)</u>

Non-Penny Symbols

<u>Market Participant</u>	<u>Fee for Crossing Orders</u> ⁽³⁾	<u>Fee for Responses to Crossing Orders</u>	<u>Facilitation and Solicitation Break-up Rebate</u> ⁽⁴⁾
<u>Market Maker/Lead Market Maker</u>	<u>\$0.17</u>	<u>\$1.10</u>	<u>N/A</u>

<u>Broker-Dealer</u>	<u>\$0.17</u>	<u>\$1.10</u>	<u>(\$0.20)</u>
<u>Firm</u>	<u>\$0.17</u>	<u>\$1.10</u>	<u>(\$0.20)</u>
<u>Professional</u>	<u>\$0.17</u>	<u>\$1.10</u>	<u>(\$0.20)</u>
<u>Customer</u>	<u>\$0.00</u>	<u>\$1.10</u>	<u>(\$0.20)</u>

(3) Fees apply to the originating and contra order.

(4) Rebates are paid on contracts submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order, except when those contracts trade against pre-existing orders and quotes on the Exchange's order books. The applicable Fee for Responses to Crossing Orders is applied to any contracts for which a rebate is provided.

Complex Order Fees and Rebates

<u>Market Participant</u>	<u>Fee for Crossing Orders^{(5), (6)}</u>	<u>Fee for Responses to Crossing Orders for Penny Symbols</u>	<u>Fee for Responses to Crossing Orders for Non-Penny Symbols</u>	<u>Facilitation and Solicitation Breakup Rebate for Penny Symbols⁽⁷⁾</u>	<u>Facilitation and Solicitation Break-up Rebate for Non-Penny Symbols⁽⁷⁾</u>
<u>Market Maker/Lead</u>					
<u>Maker</u>	<u>\$0.17</u>	<u>\$0.50</u>	<u>\$1.10</u>	<u>N/A</u>	<u>N/A</u>
<u>Broker-Dealer</u>	<u>\$0.17</u>	<u>\$0.50</u>	<u>\$1.10</u>	<u>(\$0.20)</u>	<u>(\$0.20)</u>
<u>Firm</u>	<u>\$0.17</u>	<u>\$0.50</u>	<u>\$1.10</u>	<u>(\$0.20)</u>	<u>(\$0.20)</u>
<u>Professional</u>	<u>\$0.17</u>	<u>\$0.50</u>	<u>\$1.10</u>	<u>(\$0.20)</u>	<u>(\$0.20)</u>
<u>Customer</u>	<u>\$0.00</u>	<u>\$0.50</u>	<u>\$1.10</u>	<u>(\$0.20)</u>	<u>(\$0.20)</u>

⁽⁵⁾ Fees apply to the originating and contra order.

⁽⁶⁾ Fees are charged for all legs.

⁽⁷⁾ Rebates are paid per contract per leg for contracts submitted to Facilitation and Solicitation Mechanisms that do not trade with their contra order, except when those contracts trade against pre-existing orders and quotes on the Exchange's order books. The applicable Fee for Responses to Crossing Orders is applied to any contracts for which a rebate is provided.

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