

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-96329; File No. SR-Phlx-2022-46)

November 16, 2022

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Pricing Schedule at Options 7, Section 5

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 1, 2022, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s Pricing Schedule at Options 7, Section 5.D.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

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

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

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 amend the pricing for its singly-listed U.S. dollar-settled foreign currency options (“FX options” or “FCOs”)<sup>3</sup> in Options 7, Section 5.D. Today, the Exchange assesses fees and rebates for executions that add or remove liquidity in simple and complex FX options orders. For simple FX options, Part A of Section 5.D outlines the following rebates for adding liquidity and fees for removing liquidity:

	<b>Customer</b>	<b>Lead Market Maker</b>	<b>Market Maker</b>	<b>Firm</b>	<b>Broker-Dealer</b>	<b>Professional</b>
<b>Rebate for Adding Liquidity</b>	\$0.00	\$0.20	\$0.20	\$0.00	\$0.00	\$0.00
<b>Fee for Removing Liquidity</b>	\$0.40	\$0.40	\$0.40	\$0.40	\$0.40	\$0.40

For complex FX options, Part B of Section 5.D outlines the following fees for removing liquidity:

	<b>Customer</b>	<b>Lead Market Maker</b>	<b>Market Maker</b>	<b>Firm</b>	<b>Broker-Dealer</b>	<b>Professional</b>
<b>Fee for Adding Liquidity</b>	\$0.40	\$0.40	\$0.40	\$0.40	\$0.40	\$0.40
<b>Fee for Removing Liquidity</b>	\$0.40	\$0.40	\$0.40	\$0.40	\$0.40	\$0.40

<sup>3</sup> The Exchange will add the term “FCOs” in the Options 7, Section 5.D header. FCOs include XDB, XDE, XDN, XDS, XDA, XDZ and XDC, and trade pursuant to Options 4C.

Simple FX options orders that are executed against the individual components of complex FX options orders are assessed the fees and paid the rebates in Part A. However, the individual components of complex FX options orders are assessed the fees in Part B. Transactions in FX options originating on the Exchange floor are subject to the fees for removing liquidity described above. However, if one side of the transaction originates on the Exchange floor and any other side of the trade was the result of an electronically submitted order or a quote, then the fees for removing liquidity apply to the transactions which originated on the Exchange floor, and the contracts that are executed electronically are subject to the rebates and fees, as applicable, for simple and complex orders.

The fees for FX options executions in all electronic auctions including, but not limited to, the Quote Exhaust auction,<sup>4</sup> the opening process and complex electronic auction, including the Complex Order Live Auction (“COLA”),<sup>5</sup> are \$0.40 per contract for Customer,<sup>6</sup> Professional,<sup>7</sup>

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<sup>4</sup> A Quote Exhaust occurs when the Exchange's disseminated market at a particular price level includes a quote, and such market is exhausted by an inbound contra-side quote or order ("initiating quote or order"), and following such exhaustion, contracts remain to be executed from the initiating quote or order through the initial execution price. See Options 3, Section 6(a)(2)(B)(2).

<sup>5</sup> Complex orders on the complex order book may be subject to an automated auction process pursuant to Options 3, Section 14(e).

<sup>6</sup> 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)).

<sup>7</sup> 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).

Firm,<sup>8</sup> Broker-Dealer,<sup>9</sup> Lead Market Maker<sup>10</sup> and Market Maker.<sup>11</sup> Furthermore, PIXL<sup>12</sup> executions in FX options are charged as follows: \$0.20 per contract for Initiating Orders,<sup>13</sup> and \$0.40 per contract for all other participants.

The Exchange now proposes to replace the pricing described above for simple and complex FCOs with a streamlined pricing schedule that would remove the maker/taker model as well as the current auction, floor/electronic, and simple/complex segmentations. As proposed, all Non-Customers<sup>14</sup> will be assessed a uniform Options Transaction Charge of \$0.50 per

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<sup>8</sup> The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

<sup>9</sup> The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> PIXL is the Exchange's electronic price improvement auction. See Options 3, Section 13.

<sup>13</sup> A member may electronically submit for execution an order it represents as agent on behalf of a Public Customer, broker-dealer, or any other entity ("PIXL Order") against principal interest or against any other order (except as provided in sub-paragraph (a)(6) of Options 3, Section 13) it represents as agent (an "Initiating Order") provided it submits the PIXL Order for electronic execution into the PIXL Auction ("Auction") pursuant to Options 3, Section 13. See Options 3, Section 13.

<sup>14</sup> The term "Non-Customer" applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs. The term "Joint Back Office" or "JBO" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer.

contract for all transactions in FCOs while Customers will not be assessed any Options Transaction Charges. To effectuate the foregoing changes, the Exchange proposes to delete Parts A and B of Section 5.D in their entirety and replace them with the following fee schedule:

	<b>Customer</b>	<b>Professional</b>	<b>Lead Market Maker and Market Maker</b>	<b>Broker-Dealer</b>	<b>Firm</b>
<b>Options Transaction Charge</b>	\$0.00	\$0.50	\$0.50	\$0.50	\$0.50

The Exchange also proposes to assess all market participants a surcharge of \$0.25 per contract for all complex orders traded in FCOs.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>15</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>16</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes in Options 7, Section 5.D in connection with the standard options transaction fees and complex surcharges for singly-listed FCOs are reasonable, equitable, and not unfairly discriminatory because the proposed changes will streamline FCO pricing for all market participants, and will incentivize market participants to

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

<sup>16</sup> 15 U.S.C. 78f(b)(4) and (5).

transact in more FCOs on Phlx. Specifically, the Exchange will simplify pricing by removing the maker/taker model as well as the current auction, floor/electronic, and simple/complex segmentations. The Exchange believes that it is reasonable to eliminate the \$0.20 per contract rebate currently offered to Lead Market Makers and Market Makers for adding liquidity in simple FCOs because this incentive has not been effective at encouraging these market participants to add increased liquidity in simple FCOs. The Exchange further believes that eliminating the differentiated pricing between maker/taker, auction, floor/electronic, and simple/complex FCO transactions is reasonable as it will simplify the fee structure in a manner that may make the fee schedule more comprehensible and administrable and thus, more appealing to, market participants.

As proposed, all Non-Customers will instead be assessed a uniform Options Transaction Charge of \$0.50 per contract for all transactions in FCOs while Customers will not be assessed any Options Transaction Charges. While Non-Customers will be charged higher Options Transaction Fees under the proposed pricing program,<sup>17</sup> the Exchange believes that the proposal is reasonable and would continue to incentivize these market participants to transact in singly-listed FCOs because the proposed fees generally remain lower than the fees currently charged for the Exchange's other singly-listed options.<sup>18</sup> In addition, Customers would no longer be

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<sup>17</sup> As discussed above, Non-Customers are currently charged a \$0.40 per contract fee for removing liquidity in simple and complex FCOs. For simple FCOs, Firms, Broker-Dealers, and Professionals have the opportunity to receive free executions for adding liquidity in FCOs, while Lead Market Makers and Market Makers may receive a \$0.20 per contract rebate for adding liquidity. See Options 7, Section 5.D.

<sup>18</sup> As set forth in Options 7, Section 5.C, the Exchange currently charges Firms, Broker-Dealers, and Professionals an Options Transaction Charge of \$0.75 per contract in singly-listed options. Lead Market Makers and Market Makers are currently charged \$0.40 per contract. Lastly, Customers are charged \$0.40 per contract for transactions in singly-listed options.

assessed any standard transaction charges for FCOs whereas today, they would be assessed a \$0.40 per contract fee for removing liquidity. As a result, the Exchange believes that the proposed pricing is structured in a way that continues to encourage market participants, including Customers in particular, to transact in singly-listed FCOs on Phlx.

The Exchange believes that the proposed standard Options Transaction Charges are equitable and not unfairly discriminatory because they will apply uniformly to all similarly situated market participants. With respect to the proposal to assess no Options Transaction Charges to Customers, the Exchange notes that there is a history in the options markets of providing preferential treatment to customers, and customer order flow attracts additional liquidity to the Exchange. The Exchange believes that additional Customer order flow in FCOs will provide all market participants with more trading opportunities and encourage an increase in Lead Market Maker and Market Maker activity, which facilitates tighter spreads. This may cause an additional corresponding increase in order flow from other market participants, contributing overall towards a robust and well-balance market ecosystem, particularly in FCOs.

The Exchange believes that the proposed complex surcharge is reasonable as the surcharge is designed to update fees for Phlx's services to reflect their current value—rather than their value when the FCO pricing was adopted in its present form eight years ago<sup>19</sup>—based on Phlx's ability to deliver value to its customers by offering singly-listed products on its market like FCOs. Even with the complex surcharge, all market participants except Lead Market Makers and Market Makers would be assessed consistent or lower fees for their singly-listed

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<sup>19</sup> The Exchange has not amended pricing for FCOs since 2014. See Securities Exchange Act Release No. 72806 (August 11, 2014), 79 FR 48269 (August 15, 2014) (SR-Phlx-2014-51).

FCO orders compared to the fees currently assessed to other singly-listed options orders.<sup>20</sup>

Customer FCO transactions, in particular, will continue to get the benefit of lower pricing even with the complex surcharge. Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants through more trading opportunities. This, in turn, attracts Lead Market Maker and Market Maker activity, which facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Further, the Exchange believes that applying the complex surcharge consistently across all market participants, in conjunction with the uniform pricing described above, will streamline the fee structure in a manner that may make the fee schedule may be more comprehensible and administrable to the benefit of all market participants. Lastly, the Exchange believes that the proposed complex surcharge is equitable and not unfairly discriminatory as the surcharge will apply uniformly to all market participants.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of intra-market competition, the proposed pricing for singly-listed FCOs will apply uniformly to all similarly situated market participants. Specifically, all Non-Priority Customers will be assessed a uniform Options Transaction Charge while Customers will not be assessed any Options Transaction Charges. In addition, all market participants will be assessed a uniform surcharge on

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<sup>20</sup> Aggregating the proposed complex surcharge and options transaction charges, all Non-Customers would be assessed \$0.75 per contract for complex trades in singly-listed FCOs while Customers would be assessed \$0.25 per contract. In contrast, under the singly-listed options pricing schedule in Options 7, Section 5.C, Firms, Broker-Dealers, and Professionals would be assessed \$0.75 per contract, and Lead Market Makers, Market Makers, and Customers would be charged \$0.40 per contract.

their complex FCO transactions. Even with the complex surcharge, Customers will continue to be charged lower fees for FCO trades. Accordingly, the proposed FCO pricing is designed to incentivize Customer order flow in particular, which the Exchange believes will benefit all market participants by providing more trading opportunities, which attracts other market participants, thus facilitating tighter spreads and increased order flow.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>21</sup>

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

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2022-46 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-2022-46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

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

All submissions should refer to File Number SR-Phlx-2022-46 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

Sherry R. Haywood

Assistant Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).