

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104128; File No. SR-Phlx-2025-55]

## Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 7, Section 4

September 29, 2025.

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 September 26, 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 amend Phlx’s Pricing Schedule at Options 7, Section 4. Specifically, Phlx proposes to amend the Floor Transaction (Open Outcry) Floor Broker Incentive Program.

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

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

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Phlx proposes to amend Phlx's Pricing Schedule at Options 7, 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). Specifically, Phlx proposes to amend the Floor Transaction (Open Outcry) Floor Broker Incentive Program.

The Exchange proposes to amend its Floor Transaction (Open Outcry) Floor Broker Incentive Program at Options 7, Section 4. This incentive program for Floor Brokers<sup>3</sup> is designed to attract order flow to Phlx's trading floor for execution in open outcry. Currently, the Exchange pays Floor Broker certain rebates for transaction they execute on Phlx's trading floor in open outcry. Today, the following floor transactions are excluded from the rebates offered within the Floor Transaction (Open Outcry) Floor Broker Incentive Program: (1) dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions as defined in this Options 7, Section 4; (2) Firm Floor Options Transactions for

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<sup>3</sup> The term "Floor Broker" means an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders. See Phlx Options 7, Section 1(c).

members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges); and (3) Customer-to-Customer transactions.

Today, rebates are paid on qualifying volume at each threshold level based on a four-tier rebate schedule. Floor QCC Orders, as defined in Options 8, Section 30(e),<sup>4</sup> and electronic QCC Orders, as defined in Options 3, Section 12, are considered qualifying volume but are not paid rebates based on the rebate schedule, rather Floor QCC Orders and electronic QCC Orders are paid the QCC Rebates noted in Options 7, Section 4. The Exchange pays rebates based on the below schedule.

	<b>Qualifying Contracts</b>	<b>Per Contract Rebate(Customer on one side)</b>	<b>Per Contract Rebate (Non-Customer on both sides)</b>
<b>Tier 1</b>	0 -500,000	\$0.02	\$0.08
<b>Tier 2</b>	500,001-5,000,000	\$0.05	\$0.16
<b>Tier 3</b>	5,000,001-10,000,000	\$0.07	\$0.16
<b>Tier 4</b>	Greater than 10,000,000	\$0.08	\$0.20

Finally, today, rebates for the Floor Transaction (Open Outcry) Floor Broker Incentive Program are capped at \$2,000,000 per member or member organization in a given month.

### *Proposal*

At this time, the Exchange proposes to increase the rebates in all tiers by \$0.02 per contract. The Exchange proposes to offer a per contract rebate if a Customer is on one side of \$0.04 per contract for Tier 1 (0 -500,000 qualifying contracts), a \$0.07 per contract rebate for Tier 2 (500,001-5,000,000 qualifying contracts), a \$0.09 per contract rebate for Tier 3 (5,000,001-10,000,000 qualifying contracts) and a \$0.10 per contract rebate for Tier 4 (Greater

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<sup>4</sup> Today, Floor QCC Orders are not transacted in open outcry.

than 10,000,000 qualifying contracts). The Exchange proposes to offer a per contract rebate if a Non-Customer is on both sides of \$0.10 per contract for Tier 1 (0 -500,000 qualifying contracts), a \$0.18 per contract rebate for Tier 2 (500,001-5,000,000 qualifying contracts), a \$0.18 per contract rebate for Tier 3 (5,000,001-10,000,000 qualifying contracts) and a \$0.22 per contract rebate for Tier 4 (Greater than 10,000,000 qualifying contracts).

The Exchange believes that the increased rebates will attract greater order flow to Phlx's trading floor.

## 2. Statutory Basis

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

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>7</sup>

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

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>7</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>8</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>9</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>10</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>11</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange’s proposal to increase rebates in the Floor Transaction (Open Outcry) Floor Broker Incentive Program is reasonable because offering greater rebates should attract additional order flow to Phlx’s trading floor for execution in open outcry. Other Phlx floor members<sup>12</sup> may interact with the orders exposed in open outcry on the Exchange’s trading floor. Rebates will continue to be paid on all qualifying volume but the rebate will continue to vary

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<sup>8</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>9</sup> See NetCoalition, at 534 - 535.

<sup>10</sup> Id. at 537.

<sup>11</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>12</sup> Floor members include all members who have acquired a permit to trade on Phlx’s trading floor.

depending on whether a Customer is on one side of the trade or both sides of the trade are Non-Customers. The rebate is meant to assist Floor Brokers to recruit business on an agency basis. The Floor Broker may use all or part of the rebate to offset its fees. The Exchange expects that the rebate offered to executing Floor Brokers will allow them to price their services at a level that will enable them to attract order flow from market participants who would otherwise enter these orders electronically from off the floor. To the extent that Floor Brokers are able to attract these qualifying volume, other floor participants may interact with this order flow in open outcry. The Exchange believes that it is equitable and not unfairly discriminatory to pay rebates on qualifying volume for transactions executed on the trading floor, because Floor Brokers would be uniformly paid the rebates based on qualifying volume and the parties to the transaction.

The Exchange's proposal to increase rebates in the Floor Transaction (Open Outcry) Floor Broker Incentive Program is equitable and not unfairly discriminatory because all Floor Brokers are eligible for rebates and would be uniformly paid a rebate based on their Qualifying Contracts and whether a Customer is on one side of the trade or both sides of the trade are Non-Customers. The Exchange's proposal to pay the rebate provided one side of the transaction is Customer or both sides are Non-Customer is equitable and not unfairly discriminatory because the Exchange would uniformly calculate all qualifying volume and uniformly pay rebates associated with the Floor Transaction (Open Outcry) Floor Broker Incentive Program. Further, the Exchange believes its proposed floor transaction rebates for Customer on one side and Non-Customer on both sides are equitable and not unfairly discriminatory because, today, Customers are not assessed a Floor Options Transaction Charge for Penny and Non-Penny Symbols. In

contrast, the Exchange notes that Non-Customers, except Professionals,<sup>13</sup> are assessed Floor Options Transaction Charges in Penny and Non-Penny Symbols.<sup>14</sup> The Exchange proposes to pay higher rebates where there is a Non-Customer on both sides of a trade because a Floor Broker attracting Customer order flow can more easily attract Customer orders which are not assessed a floor transaction fee as compared to attracting a Non-Customer order which would pay a transaction fee to execute on Phlx's trading floor.

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

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<sup>13</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). See Options 1, Section 1(c).

<sup>14</sup> See Options 7, Section 4. Lead Market Makers and Market Makers are assessed a \$0.50 per contract Floor Options Transaction Charge for Penny and Non-Penny Symbols. Broker-Dealers and Firms are assessed a \$0.25 per contract Floor Options Transaction Charge for Penny and Non-Penny Symbols.

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

The Exchange's proposal to increase rebates in the Floor Transaction (Open Outcry) Floor Broker Incentive Program does not impose an undue burden on competition because all Floor Brokers are eligible for rebates and would be uniformly paid a rebate based on their Qualifying Contracts and whether a Customer is on one side of the trade or both sides of the trade are Non-Customers. The Exchange's proposal to pay the rebate provided one side of the transaction is Customer or both sides are Non-Customer does not impose an undue burden on competition because the Exchange would uniformly calculate all qualifying volume and uniformly pay rebates associated with the Floor Transaction (Open Outcry) Floor Broker Incentive Program. Further, the Exchange believes its proposed floor transaction rebates for Customer on one side and Non-Customer on both sides do not impose an undue burden on competition because, today, Customers are not assessed a Floor Options Transaction Charge for Penny and Non-Penny Symbols. In contrast, the Exchange notes that Non-Customers, except Professionals, are assessed Floor Options Transaction Charges in Penny and Non-Penny Symbols.<sup>15</sup> The Exchange proposes to pay higher rebates where there is a Non-Customer on both sides of a trade because a Floor Broker attracting Customer order flow can more easily attract Customer orders which are not assessed a floor transaction fee as compared to attracting a Non-Customer order which would pay a transaction fee to execute on Phlx's trading floor.

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<sup>15</sup> See Options 7, Section 4. Lead Market Makers and Market Makers are assessed a \$0.50 per contract Floor Options Transaction Charge for Penny and Non-Penny Symbols. Broker -Dealers and Firms are assessed a \$0.25 per contract Floor Options Transaction Charge for Penny and Non-Penny Symbols.



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>16</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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-Phlx-2025-55 on the subject line.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Paper Comments:

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

All submissions should refer to file number SR-Phlx-2025-55. 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-2025-55 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.<sup>17</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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