

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104400; File No. SR-Phlx-2025-66]

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

December 15, 2025

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 December 1, 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 the Monthly Market Maker Cap and Monthly Firm Fee Cap in 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).

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.

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

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

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

1. Purpose

Phlx proposes to amend its Pricing 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) to amend rule text related to the Monthly Market Maker Cap and the Monthly Firm Fee Cap. Each change is described below.

Monthly Market Maker Cap

Today, Lead Market Makers³ and Market Makers⁴ 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) Qualified Contingent Cross (“QCC”) Transaction Fees (as defined in

³ 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).

⁴ 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. See Options 7, Section 1(c).

Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)).⁵ Currently, all dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) are excluded from the Monthly Market Maker Cap. Further, today, 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 are assessed fees per contract as follows: \$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, and \$0.18 per contract in a non-Complex electronic auction, which includes for purposes of this fee, the opening process.⁶

The Exchange proposes to amend the rule text by relocating current text and adding new text. The Exchange propose to state: Lead Market Makers and Market Makers are subject to a “Monthly Market Maker Cap” of \$500,000 for:

- Ø electronic Option Transaction Charges, excluding: (i) surcharges; (ii) options overlying broad-based index options symbols listed (as defined in Options 7, Section 5.A), (iii) dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4); (iv) Crossing Order Fees (as defined in Options 7, Section 6, F); and (v) FLEX Electronic Transaction Fees (as defined in Options 7, Section 6, B); and

- Ø QCC Transaction Fees (as defined in this Options 7, Section 4).

For this section of the Pricing Schedule, the Exchange is relocating rule text concerning dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy

⁵ The trading activity of separate Lead Market Maker and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations.

⁶ A Complex electronic auction includes, but is not limited to, an Exposure Complex Auction pursuant to Supplementary Material .01 to Options 3, Section 14. Also, 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.

executions without substantive change. The Exchange proposes exclusions for Crossing Order⁷ Fees and FLEX⁸ Electronic Transaction Fees in the added rule text. The Exchange recently adopted new pricing to Phlx's Pricing Schedule related to its new functionality⁹ that was similar to pricing on Nasdaq ISE, LLC ("ISE"). Among other changes, SR-Phlx-2025-48 adopted pricing¹⁰ for its (1) new electronic FLEX functionality pursuant to Options 3A, (2) Facilitation Mechanism pursuant to Options 3, Section 11(b) and (c), (3) Solicited Order Mechanism pursuant to Options 3, Section 11(d) and (e), and (4) Block Order Mechanism pursuant to Options 3, Section 11(a).¹¹ The Exchange inadvertently did not include rule text about the new pricing for Crossing Order Fees and FLEX Electronic Transaction Fees with respect to the Monthly Market Maker Cap.¹² At this time, the Exchange proposes to note that Crossing Order Fees and FLEX Electronic Transaction Fees are excluded from the Monthly Market Maker Cap.

⁷ 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. See Options 7, Section 1(c).

⁸ FLEX Options are customized options contracts that allow investors to tailor contract terms for exchange-listed equity and index options. See Phlx Options 3A.

⁹ See Securities Exchange Act Release No. 104031 (September 24, 2025), 90 FR 46682 (September 29, 2025) (SR-Phlx-2025-48) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Pricing for New Functionality).

¹⁰ This new functionality is being migrated to Phlx's trading platform over a five week timeframe on a symbol by symbol basis. The migration will be complete on December 8, 2025. See <https://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2025-32>.

¹¹ 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. The Solicited Order Mechanism or "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. 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).

¹² ISE does not offer a market maker cap.

The Exchange also proposes to update the citations to the pricing that is being referenced in the Monthly Market Maker Cap and also conforming the format of the citations to that pricing.

Monthly Firm Fee Cap

Today, Firms¹³ are subject to a \$250,000 “Monthly Firm Fee Cap.” Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month that exceed the Monthly Firm Fee Cap per member or member organization, when such members or member organizations are trading in their own proprietary account, are subject to a reduced transaction fee of \$0.02 per capped contract unless there is no fee or the fee is waived. Today, all dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in this Options 7, Section 4) are excluded from the Monthly Firm Fee Cap. Today, transactions in broad-based index options symbols listed within Options 7, Section 5.A. are excluded from the Monthly Firm Fee Cap. Finally, today, QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

At this time, as the Monthly Firm Fee Cap currently applies to Firm Floor Options Transaction Charges, the Exchange proposes to specifically note that “Electronic Options Transaction Charges are excluded from the Monthly Firm Fee Cap.” The Exchange notes that this proposed text does not substantively amend the Monthly Firm Fee Cap, rather it will complete the list of excluded transaction charges. Finally, the Exchange proposes to add a citation for QCC Transaction Charges.

¹³ The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC. See Options 7, Section 1(c).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ 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.”¹⁶

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁷ (“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.¹⁸ As the court emphasized, the Commission “intended in Regulation NMS that

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁷ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁸ 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.”¹⁹

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’....”²⁰ 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.

Monthly Market Maker Cap

The Exchange’s proposal to relocate and amend current rule text is reasonable, equitable and not unfairly discriminatory because the revised rule text makes clear what rule text is included and excluded in a transparent manner with citations to the rule text.

The Exchange’s proposal to add new rule text to exclude Crossing Order Fees and FLEX Electronic Transaction Fees from the Monthly Market Maker Cap is reasonable. The recently adopted²¹ auction pricing for Crossing Order Fees and FLEX Electronic Transaction Fees needs to be addressed for purposes of the Monthly Market Maker Cap. In terms of auction pricing, PIXL is the only other auction on Phlx and it is explicitly addressed in the rule text. The

¹⁹ Id. at 537.

²⁰ 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)).

²¹ See Securities Exchange Act Release No. 104031 (September 24, 2025), 90 FR 46682 (September 29, 2025) (SR-Phlx-2025-48) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Pricing for New Functionality).

remainder of the pricing that is discussed in the Monthly Market Maker cap is order book pricing. Excluding these auctions (Crossing Order Fees and FLEX Electronic Transaction Fees) is reasonable because the pricing is new and the Phlx migration is not complete.²² Phlx is seeking to encourage market participants to utilize this new functionality which is currently not available for all symbols until the migration is complete on December 8, 2025. Once the migration is complete, Phlx will consider whether to amend its cap to include the auctions or certain auction transactions to encourage greater activity in the auctions. Further, when Phlx adopted the pricing in SR-Phlx-2025-48 it was mirroring pricing offered on ISE. ISE does not offer a similar market maker cap.

The Exchange's proposal to add new rule text to exclude Crossing Order Fees and FLEX Electronic Transaction Fees from the Monthly Market Maker Cap is equitable and not unfairly discriminatory because the Exchange would exclude Crossing Order Fees and FLEX Electronic Transaction Fees from the Monthly Market Maker Cap in a uniform manner for all Phlx members and member organizations.

Monthly Firm Fee Cap

The Exchange's proposal to specifically note that electronic Options Transaction Charges are excluded from the Monthly Firm Fee Cap and add a citation for QCC Transaction Charges is reasonable, equitable and not unfairly discriminatory as these amendments are non-substantive technical amendments to further clarify existing rule text.

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.

²² Only a handful of symbols are trading on the migrated platform.

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

The Exchange's proposal to add new rule text to exclude Crossing Order Fees and FLEX Electronic Transaction Fees from the Monthly Market Maker Cap does not impose an undue burden on competition because the Exchange would exclude Crossing Order Fees and FLEX Electronic Transaction Fees from the Monthly Market Maker Cap in a uniform manner for all Phlx members and member organizations.

The Exchange's proposal to specifically note that electronic Options Transaction Charges are excluded from the Monthly Firm Fee Cap and add a citation for QCC Transaction Charges does not impose an undue burden on competition because these amendments are non-substantive technical amendments to further clarify existing rule text.

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.²³

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. Please include file number SR-Phlx-2025-66 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.

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to file number SR-Phlx-2025-66. 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-2025-66 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.²⁴

Sherry R. Haywood,

Assistant Secretary.

²⁴ 17 CFR 200.30-3(a)(12).