

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ OMX 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"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
 Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

**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 \*       Last Name \*   
 Title \*   
 E-mail \*   
 Telephone \*       Fax

**Signature**  
 Pursuant to the requirements of the Securities Exchange Act of 1934,  
 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.  
 (Title \*)  
 Date       Executive Vice President and General Counsel  
 By         
 (Name \*)

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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

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

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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, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

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

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Exhibit Sent As Paper Document

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

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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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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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) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposal to adopt business continuity and disaster recovery plans (“BC/DR Plans”) testing requirements for certain Exchange Member Organizations<sup>3</sup> and PSX Participants<sup>4</sup>

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

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

<sup>3</sup> The term “Member Organization” is defined as “a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of Rules 900.1 or 900.2 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws. References herein to officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization.” See Exchange Rule 1(o).

<sup>4</sup> The term “PSX Participant” or “Participant” is defined as “an entity that fulfills the obligations contained in Rule 3211 regarding participation in the System, and includes: (1) ‘Equities ECNs,’ which are member organizations that meet all of the requirements of Rule 3223, and that participate in the System with respect to one or more System Securities; (2) ‘PSX Market Makers’ or ‘Market Makers’, member organizations that are registered as PSX Market Makers for purposes of participation in the System on a fully automated basis with respect to one or more System securities; and (3) ‘Order Entry Firms,’ which are member organizations that are registered for the purposes of entering orders in System Securities into the System. This term shall also include any Electronic Communications Network or Alternative Trading System (as such terms are defined in Regulation NMS) that fails to meet all the requirements of Rule 3223.” See PSX Rule 3301(c).

(“Participants”) in connection with Regulation Systems Compliance and Integrity (“Regulation SCI”), as further described below.<sup>5</sup>

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of the applicable portion of the Exchange’s rules is attached hereto 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 of the Exchange on July 1, 2015. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change. The Exchange will implement the proposed rule on November 2, 2015.

Questions and comments on the proposed rule change may be directed to T. Sean Bennett, Associate General Counsel, at (301) 978-8499 (telephone) or (301) 978-8472 (fax).

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

a. Purpose

The Exchange is proposing to adopt new Rule 926 to implement the BC/DR Plans requirements of Rule 1004 of Regulation SCI. As adopted by the Commission, Regulation SCI applies to certain self-regulatory organizations (including the Exchange),

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<sup>5</sup> See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (“SCI Adopting Release”).

alternative trading systems (“ATs”), plan processors, and exempt clearing agencies (collectively, “SCI entities”), and will require these SCI entities to comply with requirements with respect to the automated systems central to the performance of their regulated activities. Among the requirements of Regulation SCI is Rule 1001(a)(2)(v), which requires the Exchange and other SCI entities to maintain “[b]usiness continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption.”<sup>6</sup> The Exchange has put extensive time and resources toward planning for system failures and already maintains robust BC/DR Plans consistent with the Rule. As set forth below, in connection with Regulation SCI, the Exchange is proposing to require certain Member Organizations and Participants to participate in testing of the operation of the Exchange’s BC/DR Plans.

With respect to an SCI entity’s BC/DR Plans, including its backup systems, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to: “[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.”<sup>7</sup> Paragraph (b) of Rule 1004 of Regulation SCI further requires each SCI entity to “[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional

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<sup>6</sup> 17 CFR 242.1001(a)(2)(v).

<sup>7</sup> 17 CFR 242.1004(a).

and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months.”<sup>8</sup> In order to comply with Rule 1004 of Regulation SCI, the Exchange proposes to adopt new Rule 926, which incorporates the requirements of Rule 1004 of Regulation SCI as part of the Exchange’s rules, and sets forth the notice, selection criteria and obligations of Member Organizations and Participants with respect to BC/DR Plans testing.

The Exchange proposes to adopt Rule 926(a), which will set forth the Exchange’s obligations with respect to the selection of Members Organizations and Participants for testing. Specifically, the rule will require the Exchange to “[e]stablish standards for the designation of those Members Organizations and Participants that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.” The proposed new rule further provides that “[s]uch standards may include volume-based and/or market share-based criteria, and may be adjusted from time to time by the Exchange.” Lastly, the proposed new rule will require the Exchange to provide public notice of the standards that it adopts.

The Exchange is proposing to adopt Rule 926(b), which will set forth the obligations of the Exchange and its Members Organizations and Participants with respect to testing. Specifically, the rule will require the Exchange to “designate Members Organizations and PSX Participants pursuant to the standards established in paragraph (a) of this rule and require participation by such designated Members Organizations and PSX

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<sup>8</sup> 17 CFR 242.1004(b).

Participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the Exchange, provided that such frequency shall not be less than once every 12 months.” Moreover, the rule will require the Exchange to provide at least six months prior notice to Members Organizations and Participants that are designated for mandatory testing. Lastly, the rule will provide notice that participation in testing is a condition of membership for Members Organizations and Participants that are designated for testing.

The Exchange encourages all Member Organizations and Participants to connect to the Exchange’s backup systems and to participate in testing of such systems;<sup>9</sup> however, certain Member Organizations and Participants will be obligated to participate in BC/DR Plans testing. In adopting new Rule 926, the Exchange will require mandatory participation in BC/DR Plans testing by those Member Organizations and Participants that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans on the Exchange and PSX, respectively. The Exchange believes that using overall participation on its markets (by volume and/or market share) as a measure to select Member Organizations and Participants for mandatory participation in BC/DR Plans testing is a reasonable means by which it can determine which Member Organizations and Participants are necessary for the maintenance of fair and orderly markets in the

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<sup>9</sup> In this regard, the Exchange will allow any Member Organization or Participant to participate in the testing of the Exchange’s BC/DR Plans, which is consistent with the Plan. See SCI Adopting Release, *supra* note 5 at 72350. The Exchange will provide instructions on how a Member Organization and Participant must inform the Exchange of its interest in participating in an upcoming BC/DR Plans test via the announcement of the test date. A Member Organization or Participant must provide the Exchange notice of its interest to participate at least a week prior to the test date and must have the appropriate connection for testing in place.

event of the activation of such plans.<sup>10</sup> For each BC/DR Plans test cycle, the Exchange will select the top five Member Organizations on the Exchange and the top five Participants on PSX based on the Exchange's measure of overall participation on each of those markets. All notices concerning BC/DR Plans testing will be posted on the Exchange's website.

The Exchange is proposing to initially select Member Organizations and Participants with the highest levels of trading volume on the Exchange and PSX over four calendar months ("Measurement Period") as mandatory testing Member Organizations and Participants, respectively.<sup>11</sup> Specifically, the Measurement Period will be the four calendar months of trading immediately prior to the Exchange's announcement of the next BC/DR Plans test date. The Measurement Period will always begin at a point after the Exchange announces the criteria to be used in the next BC/DR Plans test. By way of example, if on October 6, 2017 the Exchange announced the BC/DR Plans test selection criteria and on March 2, 2018 the Exchange announced a BC/DR Plans test date of September 8, 2018, the Measurement Period used to select Member Organizations and Participants subject to mandatory testing would be November 2017 through February 2018. Member Organizations and Participants not obligated to participate that wish to participate in this test must inform the Exchange no later than September 1, 2018.<sup>12</sup>

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<sup>10</sup> The Exchange will provide notice of the specific selection criteria and measurement period in a notice to Member Organizations and Participants. The initial selection criteria and measurement period will be announced no later than November 3, 2015.

<sup>11</sup> The Exchange may change the total number of Member Organizations and Participants selected from time to time.

<sup>12</sup> See note 9.



b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>13</sup> in general, and further the objectives of Section 6(b)(5) of the Act,<sup>14</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal will ensure that the Member Organizations and Participants necessary to ensure the maintenance of fair and orderly markets are properly designated consistent with Rule 1004 of Regulation SCI. Specifically, the proposal will adopt clear and objective criteria with respect to the designation of Member Organizations and Participants that are required to participate in the testing of the Exchange's BC/DR Plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, "SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities,

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<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.”<sup>15</sup>

The Exchange believes that this proposal is consistent with such authority and legal responsibility.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the proposal is not a competitive proposal but rather is necessary for the Exchange’s compliance with Regulation SCI.

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)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>17</sup> in that the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission

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<sup>15</sup> See SCI Adopting Release, supra note 5 at 72350.

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

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. As described above, the changes proposed in this filing are necessary for the Exchange to comply with Regulation SCI. Because the proposed rule is designed to conform the Exchange's rules to a Commission rule, the proposal qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4.<sup>18</sup>

The Exchange believes that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. Specifically, the Exchange is proposing the change so that it can implement the BC/DR Plans testing requirement of Regulation SCI. The proposed rule will enable the Exchange to require Member Organizations and Participants to participate in BC/DR Plans testing, which will benefit all market participants by ensuring that significant disruptions to the market are minimized. Therefore, the Exchange does not believe that the proposed rule change will negatively affect investor protection or the public interest, but rather serves to protect investors and the public interest. Further, because the proposed change implements an important regulatory requirement of the

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<sup>18</sup> 17 CFR 240.19b-4(f)(6). See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008) ("Commission Guidance and Amendment to the Rule Relating to Organization and Program Management Concerning Proposed Rule Changes by Self-Regulatory Organizations") (the "Streamlining Release"). As set forth in the Streamlining Release, Rule 19b-4(f)(6) permits a proposed rule change to become immediately effective to the extent such proposal is a proposed rule change to implement provisions of an approved national market system plan or a Commission rule. *Id.* at 40148.

Exchange, it does not believe that it imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange plans on implementing the proposed change on November 2, 2015, which the Exchange believes will be concurrent with the implementation of other SCI entities' similar rules and requirements to comply with the BC/DR Plans testing requirement of Regulation SCI. Accordingly, the Exchange requests that the Commission waive the 30 day operative delay provided for in Rule 19b-4(f)(6)(iii).<sup>19</sup>

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

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<sup>19</sup> 17 CFR 240.19b-4(f)(6)(iii).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2015-88)

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to adopt Business Continuity and Disaster Recovery Plans Testing Requirements

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 October 30, 2015, NASDAQ OMX 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 adopt business continuity and disaster recovery plans (“BC/DR Plans”) testing requirements for certain Exchange Member Organizations<sup>3</sup> and

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

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

<sup>3</sup> The term “Member Organization” is defined as “a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of Rules 900.1 or 900.2 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws. References herein to officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization.” See Exchange Rule 1(o).

PSX Participants<sup>4</sup> (“Participants”) in connection with Regulation Systems Compliance and Integrity (“Regulation SCI”).<sup>5</sup>

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqomxphlx.cchwallstreet.com/>, 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 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.

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<sup>4</sup> The term “PSX Participant” or “Participant” is defined as “an entity that fulfills the obligations contained in Rule 3211 regarding participation in the System, and includes: (1) ‘Equities ECNs,’ which are member organizations that meet all of the requirements of Rule 3223, and that participate in the System with respect to one or more System Securities; (2) ‘PSX Market Makers’ or ‘Market Makers’, member organizations that are registered as PSX Market Makers for purposes of participation in the System on a fully automated basis with respect to one or more System securities; and (3) ‘Order Entry Firms,’ which are member organizations that are registered for the purposes of entering orders in System Securities into the System. This term shall also include any Electronic Communications Network or Alternative Trading System (as such terms are defined in Regulation NMS) that fails to meet all the requirements of Rule 3223.” See PSX Rule 3301(c).

<sup>5</sup> See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (“SCI Adopting Release”).

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

1. Purpose

The Exchange is proposing to adopt new Rule 926 to implement the BC/DR Plans requirements of Rule 1004 of Regulation SCI. As adopted by the Commission, Regulation SCI applies to certain self-regulatory organizations (including the Exchange), alternative trading systems (“ATs”), plan processors, and exempt clearing agencies (collectively, “SCI entities”), and will require these SCI entities to comply with requirements with respect to the automated systems central to the performance of their regulated activities. Among the requirements of Regulation SCI is Rule 1001(a)(2)(v), which requires the Exchange and other SCI entities to maintain “[b]usiness continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption.”<sup>6</sup> The Exchange has put extensive time and resources toward planning for system failures and already maintains robust BC/DR Plans consistent with the Rule. As set forth below, in connection with Regulation SCI, the Exchange is proposing to require certain Member Organizations and Participants to participate in testing of the operation of the Exchange’s BC/DR Plans.

With respect to an SCI entity’s BC/DR Plans, including its backup systems, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to: “[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance

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<sup>6</sup> 17 CFR 242.1001(a)(2)(v).

of fair and orderly markets in the event of the activation of such plans.”<sup>7</sup> Paragraph (b) of Rule 1004 of Regulation SCI further requires each SCI entity to “[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months.”<sup>8</sup> In order to comply with Rule 1004 of Regulation SCI, the Exchange proposes to adopt new Rule 926, which incorporates the requirements of Rule 1004 of Regulation SCI as part of the Exchange’s rules, and sets forth the notice, selection criteria and obligations of Member Organizations and Participants with respect to BC/DR Plans testing.

The Exchange proposes to adopt Rule 926(a), which will set forth the Exchange’s obligations with respect to the selection of Members Organizations and Participants for testing. Specifically, the rule will require the Exchange to “[e]stablish standards for the designation of those Members Organizations and Participants that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.” The proposed new rule further provides that “[s]uch standards may include volume-based and/or market share-based criteria, and may be adjusted from time to time by the Exchange.” Lastly, the proposed new rule will require the Exchange to provide public notice of the standards that it adopts.

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<sup>7</sup> 17 CFR 242.1004(a).

<sup>8</sup> 17 CFR 242.1004(b).



The Exchange is proposing to adopt Rule 926(b), which will set forth the obligations of the Exchange and its Members Organizations and Participants with respect to testing. Specifically, the rule will require the Exchange to “designate Members Organizations and PSX Participants pursuant to the standards established in paragraph (a) of this rule and require participation by such designated Members Organizations and PSX Participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the Exchange, provided that such frequency shall not be less than once every 12 months.” Moreover, the rule will require the Exchange to provide at least six months prior notice to Members Organizations and Participants that are designated for mandatory testing. Lastly, the rule will provide notice that participation in testing is a condition of membership for Members Organizations and Participants that are designated for testing.

The Exchange encourages all Member Organizations and Participants to connect to the Exchange’s backup systems and to participate in testing of such systems;<sup>9</sup> however, certain Member Organizations and Participants will be obligated to participate in BC/DR Plans testing. In adopting new Rule 926, the Exchange will require mandatory participation in BC/DR Plans testing by those Member Organizations and Participants that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such

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<sup>9</sup> In this regard, the Exchange will allow any Member Organization or Participant to participate in the testing of the Exchange’s BC/DR Plans, which is consistent with the Plan. See SCI Adopting Release, *supra* note 5 at 72350. The Exchange will provide instructions on how a Member Organization and Participant must inform the Exchange of its interest in participating in an upcoming BC/DR Plans test via the announcement of the test date. A Member Organization or Participant must provide the Exchange notice of its interest to participate at least a week prior to the test date and must have the appropriate connection for testing in place.

plans on the Exchange and PSX, respectively. The Exchange believes that using overall participation on its markets (by volume and/or market share) as a measure to select Member Organizations and Participants for mandatory participation in BC/DR Plans testing is a reasonable means by which it can determine which Member Organizations and Participants are necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.<sup>10</sup> For each BC/DR Plans test cycle, the Exchange will select the top five Member Organizations on the Exchange and the top five Participants on PSX based on the Exchange's measure of overall participation on each of those markets. All notices concerning BC/DR Plans testing will be posted on the Exchange's website.

The Exchange is proposing to initially select Member Organizations and Participants with the highest levels of trading volume on the Exchange and PSX over four calendar months ("Measurement Period") as mandatory testing Member Organizations and Participants, respectively.<sup>11</sup> Specifically, the Measurement Period will be the four calendar months of trading immediately prior to the Exchange's announcement of the next BC/DR Plans test date. The Measurement Period will always begin at a point after the Exchange announces the criteria to be used in the next BC/DR Plans test. By way of example, if on October 6, 2017 the Exchange announced the BC/DR Plans test selection criteria and on March 2, 2018 the Exchange announced a BC/DR Plans test date of

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<sup>10</sup> The Exchange will provide notice of the specific selection criteria and measurement period in a notice to Member Organizations and Participants. The initial selection criteria and measurement period will be announced no later than November 3, 2015.

<sup>11</sup> The Exchange may change the total number of Member Organizations and Participants selected from time to time.

September 8, 2018, the Measurement Period used to select Member Organizations and Participants subject to mandatory testing would be November 2017 through February 2018. Members Organizations and Participants not obligated to participate that wish to participate in this test must inform the Exchange no later than September 1, 2018.<sup>12</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>13</sup> in general, and further the objectives of Section 6(b)(5) of the Act,<sup>14</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal will ensure that the Member Organizations and Participants necessary to ensure the maintenance of fair and orderly markets are properly designated consistent with Rule 1004 of Regulation SCI. Specifically, the proposal will adopt clear and objective criteria with respect to the designation of Member Organizations and Participants that are required to participate in the testing of the Exchange's BC/DR Plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, "SROs have the authority,

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<sup>12</sup> See note 9.

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest."<sup>15</sup> The Exchange believes that this proposal is consistent with such authority and legal responsibility.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the proposal is not a competitive proposal but rather is necessary for the Exchange's compliance with Regulation SCI.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant

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<sup>15</sup> See SCI Adopting Release, supra note 5 at 72350.

to Section 19(b)(3)(A)(iii) of the Act<sup>16</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>17</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-2015-88 on the subject line.

##### Paper comments:

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

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

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR-Phlx-2015-88. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

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

All submissions should refer to File Number SR-Phlx-2015-88 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>18</sup>

Robert W. Errett  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

The text of the proposed rule change is below. Proposed new text is underlined.

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**Rule 926. The Exchange's Business Continuity and Disaster Recovery Plan Testing Requirements for Member Organizations and PSX Participants Pursuant to Regulation SCI.**

With respect to the Exchange's business continuity and disaster recovery plans, including its backup systems, the Exchange shall:

(a) Establish standards for the designation of those Member Organizations and PSX Participants that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. Such standards may include volume-based and/or market share-based criteria, and may be adjusted from time to time by the Exchange. The Exchange will provide public notice of the standards;

(b) Designate Members Organizations and PSX Participants pursuant to the standards established in paragraph (a) of this rule and require participation by such designated Members Organizations and PSX Participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the Exchange, provided that such frequency shall not be less than once every 12 months. The Exchange will provide at least six months prior notice to Members Organizations and PSX Participants that are designated for mandatory testing, and participation of such Members Organizations and PSX Participants is a condition of membership.

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