

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ PHLX LLC
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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 checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	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 * Andrew Last Name * Madar
 Title * Senior Associate General Counsel
 E-mail * andrew.madar@nasdaq.com
 Telephone * (301) 978-8420 Fax (301) 978-8472

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 11/01/2016 Executive Vice President and General Counsel
 By Edward S. Knight
 (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

Add Remove View

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) NASDAQ PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s connectivity fees at Chapter VIII of the NASDAQ PHLX LLC Pricing Schedule to allow PSX Participants to purchase ports at a reduced monthly rate if the PSX Participant meets certain criteria, as described further below.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on August 15, 2016. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Andrew Madar
Senior Associate General Counsel
Nasdaq, Inc.
301-978-8420.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to modify Phlx's fee schedule to allow PSX Participants to purchase ports at a reduced monthly rate if the PSX Participant meets certain criteria, as described further below.

Chapter VIII of the Phlx Pricing Schedule sets forth monthly fees to purchase ports to establish connectivity to the NASDAQ PSX market, as well as ports to receive data from the NASDAQ PSX market. For example, the monthly rate to purchase an OUCH port is \$400 per port per month, the monthly rate to purchase a RASH port is \$400 per port per month, and the monthly rate to purchase a Multicast TotalView-ITCH port (software-based) is \$1,000 per port per month. These fees are assessed in full month increments, e.g., are not prorated. The maximum monthly fee assessed to a PSX Participant for the port fees set forth in Chapter VIII is \$30,000 per month. Chapter VIII also provides that new PSX Participants will not be assessed port fees through August 1, 2017.³

Phlx now proposes to amend Chapter VIII lower the per-month cost of purchasing ports for PSX Participants who meet certain criteria. Specifically, any PSX Participant with total Port Fees paid in Chapter VIII and Chapter VII.B. in excess of \$20,000 per month may purchase additional ports above the PSX Participant's port counts by type as of September 30, 2016 at \$50 per port per month.⁴ The PSX Participant will only receive

³ Chapter VIII defines a New PSX Participant as a PSX Participant that was not a PSX Participant after July 1, 2016.

⁴ The relevant portion of Chapter VIII relates to PSX port fees, while Chapter VII.B relates to port fees in connection with the Phlx options market. For

the reduced rate up to the number of new ports the PSX Participant has versus the September 30th, 2016 total count. If a port costs less than \$50, the standard rate will apply and the port will not be included in the count for determining the reduced rate.

The following examples illustrate this change:

- Example 1. As of September 30, 2016, a PSX Participant maintains the following ports for a monthly fee of \$24,500:
- 10 OUCH ports for \$4,000 (\$400 apiece);
 - 2 Active SQF ports for \$2,500 (\$1,250 apiece);
 - 20 FIX ports for \$8,000 (\$400 apiece); and
 - 10 Multicast TotalView-ITCH ports for \$10,000 (\$1,000 apiece)
- The PSX Participant's Phlx ports (two Active SQF ports) are considered when determining the PSX Participant's monthly fees, but not its total port count for purposes of determining the reduced port fee rate. The PSX Participant's total port count for purposes of determining the reduced rate is therefore 40 ports.
 - The PSX Participant's port count as of November 1, 2016, is the same (40) as compared to September 30, 2016.
 - On November 1, 2016, the PSX Participant wants to purchase 16 new ports: three OUCH ports for \$400 apiece, three DROP ports for \$400 apiece, and ten disaster recover ports for \$25 apiece.
 - Since the PSX Participant's total port count will be 16 more than its September count, it will pay a reduced rate of \$50 for each of the new OUCH ports and DROP ports. However, since the disaster recovery ports are already only \$25, the PSX Participant will pay the standard rate for them.
- Example 2. As of September 30, 2016, the PSX Participant had the same number and kinds of ports as in Example 1. However, between September 30

purposes of determining a PSX Participant's eligibility for the reduced rate, the PSX Participant's monthly port fees would include both port fees charged under Section VII.B and port fees charged under Section VIII. The actual reduced rate, however, would only apply to PSX port fees that are charged under Section VIII.

and November 1, the PSX Participant's port count dropped from 40 ports to 30 ports, so that it now has the following ports as of November 1:

- 5 OUCH ports for \$2,000 (\$400 apiece);
- 15 FIX ports for \$6,000 (\$400 apiece); and
- 10 Multicast TotalView-ITCH ports for \$10,000 (\$1,000 apiece)
- The PSX Participant would not be able to purchase ports at a reduced rate, since its monthly port fees are no longer in excess of \$20,000 per month.

Example 3. As of September 30, 2016, the PSX Participant had the same number and kinds of ports as in Example 1. However, between September 30 and November 1, the PSX Participant's port count dropped from 40 ports to 37 ports, so that it now has the following ports as of November 1:

- 7 OUCH ports for \$2,800 (\$400 apiece);
- 20 FIX ports for \$8,000 (\$400 apiece); and
- 10 Multicast TotalView-ITCH ports for \$10,000 (\$1,000 apiece)
- On November 1, 2016, the PSX Participant wants to purchase seventeen new ports: 7 new OUCH ports for \$400 apiece, and 10 new disaster recovery ports for \$25 apiece.
- Even though its total port count as of November 1, 2016 is lower than its total port count as of September 30, 2016, the PSX Participant still has monthly port fees in excess of \$20,000, so it qualifies for the reduced port fee rate. However, the monthly rate for the disaster recovery ports is less than \$50 per month, so the PSX Participant would not pay a reduced rate for those ports, and those ports would not be included in the count for determining the reduced rate.
- The PSX Participant would therefore buy 10 new disaster recovery ports for \$25 apiece. The PSX Participant would buy three OUCH ports for \$400 apiece, since the discounted rate only applies to the ports in excess of the PSX Participant's total count as of September 30. With the purchase of three OUCH ports, the PSX Participant's total port count now equals its total port count as of September 30. The PSX Participant therefore purchases the remaining four OUCH ports at \$50 apiece.

In providing PSX Participants that incur monthly port fees of at least \$20,000 per month the opportunity to purchase additional ports at a reduced monthly cost, Phlx believes that it will incentivize greater participation on PSX. By reducing the cost to PSX Participants to increase the number of ports they use to access PSX, the Exchange hopes to increase the number of ports used by PSX Participants and therefore increase corresponding order activity.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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 proposal to charge PSX Participants \$50 per port that meet the criteria for the reduced rate is reasonable because the purpose of this proposal is to offer PSX Participants a reduced rate for port fees in order to incentivize greater participation on the Exchange. The Exchange believes that \$50 is a reasonable reduced rate, given the port fees that are currently assessed.

Similarly, the Exchange believes that the proposal to charge PSX Participants the standard rate for port fees under \$50 is reasonable because the purpose of this proposal is to offer a reduced rate for PSX Participants that meet the criteria for that reduced rate, and charging \$50 for a port fee that is currently under \$50 would not be a reduced rate.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that requiring PSX Participants to incur monthly port fees in excess of \$20,000 per month in order to be eligible for the reduced port fee is reasonable. The Exchange is attempting to incentivize members to conduct more activity on the Exchange by purchasing additional ports, and believes that the \$20,000 threshold is reasonable because it will allow some members to immediately qualify for the reduced port fee, while incentivizing other members to purchase additional ports in order to qualify for the reduced rate. The Exchange believes that it is reasonable to consider the port fees that a PSX Participant pays for connectivity to both Phlx and PSX in determining eligibility for the reduced port fee because both fees are assessed by the Exchange for connectivity to the Exchange.

The Exchange believes that the other aspects of the proposal, i.e., using September 30, 2016 as a baseline for measuring the PSX Participant's total port count, and excluding ports that cost less than \$50 from a PSX Participant's total count, are also reasonable. The Exchange believes that the September 30, 2016 baseline is reasonable because it provides an objective basis for measuring a PSX Participant's eligibility for the reduced rate that cannot be modified by the PSX Participant in order to gain an increased benefit under the program. The Exchange believes that it is reasonable to exclude ports that cost less than \$50 from the PSX Participant's total count. The Exchange will not charge a reduced rate for such ports, and believes that it is consistent to exclude those ports from the corresponding count to determine the reduced rate.

The Exchange believes that the proposal to charge \$50 per qualifying port is equitable and not unfairly discriminatory because all PSX Participants that meet the criteria for the reduced rate, e.g., PSX Participants that pay monthly port fees in excess of

\$20,000, will be eligible for that rate. Similarly, the Exchange believes that the proposal to charge PSX Participants the standard rate for port fees under \$50 is equitable and not unfairly discriminatory, because this provision will be applied uniformly to all PSX Participants, and charging \$50 for a port fee that is currently under \$50 would not be a reduced rate. The Exchange also believes that it is equitable and not unfairly discriminatory to exclude ports that cost under \$50 from the count in determining the reduced rate. All PSX Participants will continue to pay the standard rate for these ports. In addition, since these ports will not be assessed the reduced rate, the Exchange believes that it is consistent to exclude these ports in the corresponding count to determine the reduced rate.

The Exchange believes that the proposal to charge a reduced rate for PSX Participants that currently pay in excess of \$20,000 in monthly port fees is equitable and not unfairly discriminatory because all PSX Participants with monthly fees in excess of this amount will be eligible for the reduced rate, in accordance with the other requirements of this proposal, e.g., a reduced rate will only be assessed for ports in excess of a PSX Participant's total count as of September 30, 2016. Given that the purpose of this proposal is to incentivize greater activity on PSX, the Exchange believes that the \$20,000 monthly threshold is an appropriate and objective level upon which to base the reduced rate. The Exchange believes that it is equitable and not unfairly discriminatory to consider the port fees that a PSX Participant pays for connectivity to both Phlx and PSX in determining eligibility for the reduced port fee because both fees are assessed by the Exchange for connectivity to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to measure a member's port count against its September 30, 2016 total count because this is an objective standard that will be applied equally to all PSX Participants. In addition, by instituting as a baseline a month that has already occurred, a PSX Participant will not be able to modify that baseline so as to increase its potential benefits under this proposal.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. 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 this instance, the proposed changes will allow a PSX Participant to pay a reduced port fee rate for ports in excess of the PSX Participant's total count as of September 30, 2016, provided the PSX Participant pays in excess of \$20,000 in monthly port fees. The Exchange believes that the proposal may enhance inter-market competition by incentivizing PSX Participants to increase their activity on the Exchange

by reducing the cost to connect to the Exchange. With respect to intra-market competition, the Exchange believes that the proposal is being equitably applied to PSX Participants, as described above, and therefore does not believe that the proposal imposes a burden on competition not necessary or appropriate.

In sum, if the changes proposed herein are unattractive to market PSX 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.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁷ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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.

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2016-111)

November __, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Connectivity Fees at Chapter VIII of the NASDAQ PHLX LLC Pricing Schedule

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 November 1, 2016, 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 connectivity fees at Chapter VIII of the NASDAQ PHLX LLC Pricing Schedule to allow PSX Participants to purchase ports at a reduced monthly rate if the PSX Participant meets certain criteria.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

The purpose of the proposed rule change is to modify Phlx's fee schedule to allow PSX Participants to purchase ports at a reduced monthly rate if the PSX Participant meets certain criteria, as described further below.

Chapter VIII of the Phlx Pricing Schedule sets forth monthly fees to purchase ports to establish connectivity to the NASDAQ PSX market, as well as ports to receive data from the NASDAQ PSX market. For example, the monthly rate to purchase an OUCH port is \$400 per port per month, the monthly rate to purchase a RASH port is \$400 per port per month, and the monthly rate to purchase a Multicast TotalView-ITCH port (software-based) is \$1,000 per port per month. These fees are assessed in full month increments, e.g., are not prorated. The maximum monthly fee assessed to a PSX Participant for the port fees set forth in Chapter VIII is \$30,000 per month. Chapter VIII also provides that new PSX Participants will not be assessed port fees through August 1, 2017.³

³ Chapter VIII defines a New PSX Participant as a PSX Participant that was not a PSX Participant after July 1, 2016.

Phlx now proposes to amend Chapter VIII lower the per-month cost of purchasing ports for PSX Participants who meet certain criteria. Specifically, any PSX Participant with total Port Fees paid in Chapter VIII and Chapter VII.B. in excess of \$20,000 per month may purchase additional ports above the PSX Participant's port counts by type as of September 30, 2016 at \$50 per port per month.⁴ The PSX Participant will only receive the reduced rate up to the number of new ports the PSX Participant has versus the September 30th, 2016 total count. If a port costs less than \$50, the standard rate will apply and the port will not be included in the count for determining the reduced rate.

The following examples illustrate this change:

- Example 1. As of September 30, 2016, a PSX Participant maintains the following ports for a monthly fee of \$24,500:
- 10 OUCH ports for \$4,000 (\$400 apiece);
 - 2 Active SQF ports for \$2,500 (\$1,250 apiece);
 - 20 FIX ports for \$8,000 (\$400 apiece); and
 - 10 Multicast TotalView-ITCH ports for \$10,000 (\$1,000 apiece)
- The PSX Participant's Phlx ports (two Active SQF ports) are considered when determining the PSX Participant's monthly fees, but not its total port count for purposes of determining the reduced port fee rate. The PSX Participant's total port count for purposes of determining the reduced rate is therefore 40 ports.

⁴ The relevant portion of Chapter VIII relates to PSX port fees, while Chapter VII.B relates to port fees in connection with the Phlx options market. For purposes of determining a PSX Participant's eligibility for the reduced rate, the PSX Participant's monthly port fees would include both port fees charged under Section VII.B and port fees charged under Section VIII. The actual reduced rate, however, would only apply to PSX port fees that are charged under Section VIII.

- The PSX Participant's port count as of November 1, 2016, is the same (40) as compared to September 30, 2016.
- On November 1, 2016, the PSX Participant wants to purchase 16 new ports: three OUCH ports for \$400 apiece, three DROP ports for \$400 apiece, and ten disaster recover ports for \$25 apiece.
- Since the PSX Participant's total port count will be 16 more than its September count, it will pay a reduced rate of \$50 for each of the new OUCH ports and DROP ports. However, since the disaster recovery ports are already only \$25, the PSX Participant will pay the standard rate for them.

Example 2. As of September 30, 2016, the PSX Participant had the same number and kinds of ports as in Example 1. However, between September 30 and November 1, the PSX Participant's port count dropped from 40 ports to 30 ports, so that it now has the following ports as of November 1:

- 5 OUCH ports for \$2,000 (\$400 apiece);
- 15 FIX ports for \$6,000 (\$400 apiece); and
- 10 Multicast TotalView-ITCH ports for \$10,000 (\$1,000 apiece)
- The PSX Participant would not be able to purchase ports at a reduced rate, since its monthly port fees are no longer in excess of \$20,000 per month.

Example 3. As of September 30, 2016, the PSX Participant had the same number and kinds of ports as in Example 1. However, between September 30

and November 1, the PSX Participant's port count dropped from 40 ports to 37 ports, so that it now has the following ports as of

November 1:

- 7 OUCH ports for \$2,800 (\$400 apiece);
- 20 FIX ports for \$8,000 (\$400 apiece); and
- 10 Multicast TotalView-ITCH ports for \$10,000 (\$1,000 apiece)
- On November 1, 2016, the PSX Participant wants to purchase seventeen new ports: 7 new OUCH ports for \$400 apiece, and 10 new disaster recovery ports for \$25 apiece.
- Even though its total port count as of November 1, 2016 is lower than its total port count as of September 30, 2016, the PSX Participant still has monthly port fees in excess of \$20,000, so it qualifies for the reduced port fee rate. However, the monthly rate for the disaster recovery ports is less than \$50 per month, so the PSX Participant would not pay a reduced rate for those ports, and those ports would not be included in the count for determining the reduced rate.
- The PSX Participant would therefore buy 10 new disaster recovery ports for \$25 apiece. The PSX Participant would buy three OUCH ports for \$400 apiece, since the discounted rate only applies to the ports in excess of the PSX Participant's total count as of September 30. With the purchase of three OUCH ports, the PSX Participant's total port count now equals its total port count as of September 30.

The PSX Participant therefore purchases the remaining four OUCH ports at \$50 apiece.

In providing PSX Participants that incur monthly port fees of at least \$20,000 per month the opportunity to purchase additional ports at a reduced monthly cost, Phlx believes that it will incentivize greater participation on PSX. By reducing the cost to PSX Participants to increase the number of ports they use to access PSX, the Exchange hopes to increase the number of ports used by PSX Participants and therefore increase corresponding order activity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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 proposal to charge PSX Participants \$50 per port that meet the criteria for the reduced rate is reasonable because the purpose of this proposal is to offer PSX Participants a reduced rate for port fees in order to incentivize greater participation on the Exchange. The Exchange believes that \$50 is a reasonable reduced rate, given the port fees that are currently assessed.

Similarly, the Exchange believes that the proposal to charge PSX Participants the standard rate for port fees under \$50 is reasonable because the purpose of this proposal is

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

to offer a reduced rate for PSX Participants that meet the criteria for that reduced rate, and charging \$50 for a port fee that is currently under \$50 would not be a reduced rate.

The Exchange believes that requiring PSX Participants to incur monthly port fees in excess of \$20,000 per month in order to be eligible for the reduced port fee is reasonable. The Exchange is attempting to incentivize members to conduct more activity on the Exchange by purchasing additional ports, and believes that the \$20,000 threshold is reasonable because it will allow some members to immediately qualify for the reduced port fee, while incentivizing other members to purchase additional ports in order to qualify for the reduced rate. The Exchange believes that it is reasonable to consider the port fees that a PSX Participant pays for connectivity to both Phlx and PSX in determining eligibility for the reduced port fee because both fees are assessed by the Exchange for connectivity to the Exchange.

The Exchange believes that the other aspects of the proposal, i.e., using September 30, 2016 as a baseline for measuring the PSX Participant's total port count, and excluding ports that cost less than \$50 from a PSX Participant's total count, are also reasonable. The Exchange believes that the September 30, 2016 baseline is reasonable because it provides an objective basis for measuring a PSX Participant's eligibility for the reduced rate that cannot be modified by the PSX Participant in order to gain an increased benefit under the program. The Exchange believes that it is reasonable to exclude ports that cost less than \$50 from the PSX Participant's total count. The Exchange will not charge a reduced rate for such ports, and believes that it is consistent to exclude those ports from the corresponding count to determine the reduced rate.

The Exchange believes that the proposal to charge \$50 per qualifying port is equitable and not unfairly discriminatory because all PSX Participants that meet the criteria for the reduced rate, e.g., PSX Participants that pay monthly port fees in excess of \$20,000, will be eligible for that rate. Similarly, the Exchange believes that the proposal to charge PSX Participants the standard rate for port fees under \$50 is equitable and not unfairly discriminatory, because this provision will be applied uniformly to all PSX Participants, and charging \$50 for a port fee that is currently under \$50 would not be a reduced rate. The Exchange also believes that it is equitable and not unfairly discriminatory to exclude ports that cost under \$50 from the count in determining the reduced rate. All PSX Participants will continue to pay the standard rate for these ports. In addition, since these ports will not be assessed the reduced rate, the Exchange believes that it is consistent to exclude these ports in the corresponding count to determine the reduced rate.

The Exchange believes that the proposal to charge a reduced rate for PSX Participants that currently pay in excess of \$20,000 in monthly port fees is equitable and not unfairly discriminatory because all PSX Participants with monthly fees in excess of this amount will be eligible for the reduced rate, in accordance with the other requirements of this proposal, e.g., a reduced rate will only be assessed for ports in excess of a PSX Participant's total count as of September 30, 2016. Given that the purpose of this proposal is to incentivize greater activity on PSX, the Exchange believes that the \$20,000 monthly threshold is an appropriate and objective level upon which to base the reduced rate. The Exchange believes that it is equitable and not unfairly discriminatory to consider the port fees that a PSX Participant pays for connectivity to both Phlx and

PSX in determining eligibility for the reduced port fee because both fees are assessed by the Exchange for connectivity to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to measure a member's port count against its September 30, 2016 total count because this is an objective standard that will be applied equally to all PSX Participants. In addition, by instituting as a baseline a month that has already occurred, a PSX Participant will not be able to modify that baseline so as to increase its potential benefits under this proposal.

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 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 this instance, the proposed changes will allow a PSX Participant to pay a reduced port fee rate for ports in excess of the PSX Participant's total count as of September 30, 2016, provided the PSX Participant pays in excess of \$20,000 in monthly

port fees. The Exchange believes that the proposal may enhance inter-market competition by incentivizing PSX Participants to increase their activity on the Exchange by reducing the cost to connect to the Exchange. With respect to intra-market competition, the Exchange believes that the proposal is being equitably applied to PSX Participants, as described above, and therefore does not believe that the proposal imposes a burden on competition not necessary or appropriate.

In sum, if the changes proposed herein are unattractive to market PSX 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.⁷

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

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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. Please include File Number SR-Phlx-2016-111 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.

All submissions should refer to File Number SR-Phlx-2016-111. 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-2016-111 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.⁸

Robert W. Errett
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined.

NASDAQ PHLX Rules

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NASDAQ PHLX LLC Pricing Schedule

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VIII. NASDAQ PSX FEES**Port Fees[†]**

The following charges are assessed by the Exchange for ports to establish connectivity to the NASDAQ PSX market, as well as ports to receive data from the NASDAQ PSX market:

OUCH	\$400/port/month
FIX Trading Port (FIX and FIX Lite (FLITE))	\$400/port/month
RASH	\$400/port/month
Multicast TotalView-ITCH (software-based)	\$1,000/port/month
TCP ITCH data feed	\$400/port/month
DROP	\$400/port/month
Trading Ports used in Test Mode	\$100/port/month
Data Retransmission Port	No charge
Disaster recovery port (OUCH, FIX Trading Port, RASH, and DROP)	\$25/port/month
Disaster recovery port (all other ports)	No charge

The maximum monthly fee assessed to a PSX Participant for the above listed Port Fees will be \$30,000 per month.

New PSX Participants will not be assessed the above listed Port Fees through August 1, 2017. A New PSX Participant will be defined as a PSX Participant that was not a PSX Participant after July 1, 2016. Any PSX Participant with total Port Fees paid in this section and section VII.B. in excess of \$20,000 per month may purchase additional ports above the PSX Participant's port counts by type as of September 30, 2016 at \$50 per port per month. The PSX Participant will only receive the reduced rate up to the number of new ports the PSX Participant has versus the September 30, 2016 total count. If a port costs less than \$50 the standard rate will apply

and the port will not be included in the count for determining the reduced rate.

† Fees are assessed in full month increments under this section, and thus are not prorated.

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