

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="42"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2016"/> - * <input type="text" value="121"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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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"/>
			Rule		
Pilot <input type="checkbox"/>	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 *).

A proposal to amend Rule 3317 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot).

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 * <input type="text" value="Andrew"/>	Last Name * <input type="text" value="Madar"/>
Title * <input type="text" value="Senior Associate General Counsel"/>	
E-mail * <input type="text" value="andrew.madar@nasdaq.com"/>	
Telephone * <input type="text" value="(301) 978-8420"/>	Fax <input type="text" value="(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 <input type="text" value="12/13/2016"/>	Executive Vice President and General Counsel
By <input type="text" value="Edward S. Knight"/>	<input type="text"/>
(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) 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 Rule 3317 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot) relating to the handling to certain Order Types in Test Group Three Pilot Securities in connection with the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan” or “Pilot”).³ Relatedly, the Exchange also proposes to delete Commentary .14, which addresses the current handling of those Order Types. Finally, Phlx proposes to add language to Rule 3317(d)(1) to clarify the treatment of orders in a Test Group Three Security entered through the RASH or FIX protocols.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).⁴

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on August 29, 2016. 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.

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

a. Purpose

On September 7, 2016, the Exchange filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change ("Proposal") to adopt paragraph (d) and Commentary .12 to Exchange Rule 3317 to describe changes to system functionality necessary to implement the Plan. The Exchange also proposed amendments to Rule 3317(a) and (c) to clarify how the Trade-at exception may be satisfied. The SEC published the Proposal in the Federal Register for notice and comment on September 20, 2016.⁵ Phlx subsequently filed three Partial Amendments to clarify aspects of the Proposal. The Commission approved the Proposal, as amended, on October 7, 2016.⁶

In SR-Phlx-2016-92, Phlx had initially proposed a re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through

⁵ See Securities Exchange Act Release No. 78835 (September 14, 2016), 81 FR 64552 (September 20, 2016) (SR-Phlx-2016-92).

⁶ See Securities Exchange Act Release No. 79074 (October 7, 2016) (SR-Phlx-2016-92).

the OUCH and FLITE protocols in Test Group Three Pilot Securities.⁷ Phlx subsequently determined that it would not offer this re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols in Group Three Pilot Securities. As part of Partial Amendment No. 2 to SR-Phlx-2016-92, Phlx proposed to delete the relevant language from Rule 3317 related to this re-pricing functionality.

In that amendment, Phlx noted that this change would only impact the treatment of Price to Comply Orders, Non-Displayed Orders, and Post-Only orders that are submitted through the OUCH and FLITE protocols in Test Group Three Pilot Securities, as these types of Orders that are currently submitted to Phlx through the RASH or FIX protocols are already subject to this re-pricing functionality and will remain subject to this functionality under the Pilot.

In the Amendment, Phlx further noted that its systems are currently programmed so that Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities may be adjusted repeatedly to reflect changes to the NBBO and/or the best price on the Phlx book. Phlx stated that it was re-programming its systems to remove this functionality for

⁷ As originally proposed, Rule 3317(d)(2) stated that Price to Comply Orders in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price. Rule 3317(d)(3) stated that, if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price. Rule 3317(d)(4) stated that, if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Phlx Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities. In the Amendment, Phlx stated that it anticipated that this re-programming shall be completed no later than November 30, 2016. If it appeared that this functionality would remain operational by October 17, 2016, Phlx indicated that it would file a proposed rule change with the SEC and will provide notice to market participants sufficiently in advance of that date to provide effective notice. The rule change and the notice to market participants would describe the current operation of the Phlx systems in this regard, and the timing related to the re-programming.

On October 17, 2016, Phlx filed a proposal to extend the date by which it would complete the re-programming of its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols.⁸ In that proposal, Phlx stated that it anticipated that this re-programming shall be complete on or before October 31, 2016.⁹ As Phlx continued to re-program its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only

⁸ See Securities Exchange Act Release No. 79156 (October 25, 2016) (SR-Phlx-2016-106).

Subsequent to the approval of SR-Phlx-2016-92, Phlx become aware that this re-pricing functionality also applies to Price to Display Orders that are entered through the OUCH and FLITE protocols in Test Group Three Securities, and amended Commentary .14 to indicate that Price to Display Orders will be treated in the same manner as Price to Comply Orders under the re-pricing functionality.
Id.

⁹ Id.

Orders that are entered through the OUCH or FLITE protocols, it extended the date by which the re-programming shall be complete to the current date of December 12, 2016.¹⁰

Phlx has now completed re-programming its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols. However, as a result of removing the re-pricing functionality, there are instances, due to the different functionality of the OUCH and FLITE protocols in comparison to the other applicable Phlx protocols, where the behavior of certain Order Types entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities will differ from the behavior of those Order Types as set forth in Rule 3317; specifically, the behavior of Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols when the Order locks or crosses a Protected Quotation. Phlx is therefore amending Rule 3317 to clarify these differences. Although the changes made to Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE reflect the different functionality of the OUCH and FLITE protocols in comparison with the other Phlx protocols, the proposed changes treat Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through OUCH and FLITE protocols in Test Group Three Securities as consistently as possible with such orders entered through OUCH and FLITE in Control Group Securities, and Test Group One and Test Group Two Securities.

¹⁰ See Securities Exchange Release Nos. 79261 (November 8, 2016), 81 FR 80134 (November 15, 2016) (SR-Phlx-2016-110) (extending current re-pricing functionality to November 14, 2016); 79407 (November 28, 2016), 81 FR 87089 (December 2, 2016) (SR-Phlx-2016-114) (extending current re-pricing functionality to December 12, 2016).

These changes will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE when the Order has been ranked at a midpoint of the NBBO that then becomes impermissible due to changes in the NBBO.

Price to Comply Orders

Currently, Rule 3317(d)(2) states that a Price to Comply Order in a Test Group Pilot Security will operate as described in Rule 3301A(b)(1) except as provided under this paragraph. If a Price to Comply Order for a Test Group Three Pilot Security is partially executed upon entry and the remainder would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. If the Order is not executable against any previously posted orders on the Exchange Book, and the limit price of a buy (sell) Price to Comply Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of NBBO.

Phlx proposes to augment this provision to clarify the behavior of Price to Comply Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Price to Comply Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Phlx Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price will no longer lock a Protected Quotation, the Price to Comply Order will be adjusted to rank and display at its original entered limit price.¹¹

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Price to Comply Order, based on the participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.

If, after being posted on the Phlx Book, the non-displayed price of a Price to Comply Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Price to Comply Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Price to Comply Order will be cancelled.¹²

¹¹ Phlx notes that a Price to Comply Order will always be adjusted in this scenario, regardless of its port setting.

¹² For example, if the National Best Bid is \$10.00 and the National Best Offer is \$10.10, and a Price to Comply Order to buy at \$10.15 is entered, the Price to Comply Order will be displayed at \$10.05 and ranked at \$10.075. If the National Best Offer then changes to \$10.15, the Price to Comply Order will be adjusted to rank at \$10.10, and will remain displayed at \$10.05. If the National Best Offer subsequently changes to \$10.10, the Price to Comply Order will be cancelled.

Phlx notes that a Price to Comply Order, Non-Displayed Order, or Post-Only Order entered through OUCH or FLITE in either a Control Group Security, a Test Group One Pilot Security or a Test Group Two Pilot Security would only cancel if the resting order is crossed (not locked) by a Protected Quotation due to a change in the NBBO.

Non-Displayed Orders

Currently, Rule 3317(d)(3) states that a Non-Displayed Order in a Test Group Pilot Security will operate as described in Rule 3301A(b)(3) except as provided under this paragraph. A resting Non-Displayed Order in a Test Group Three Pilot security cannot execute at the price of a Protected Quotation of another market center unless the incoming Order otherwise qualifies for an exception to the Trade-at prohibition provided under Rule 3317(c)(3)(D). If the limit price of a buy (sell) Non-Displayed Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will be ranked on the Exchange Book at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). For a Non-Displayed Order in a Test Group Three Pilot Security entered through RASH or FIX, if after being posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be repriced to a price that is at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp. For a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE, if after such a Non-Displayed Order is posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be cancelled back to the Participant.

Phlx proposes to amend this provision to clarify the behavior of Non-Displayed Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Phlx Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price would no longer lock a Protected Quotation, the Non-Displayed Order will be adjusted to rank at its original entered limit price.¹³

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed.¹⁴

If entered at a price that locked or crossed a Protected Quotation, and if the NBBO changes such that it cannot be ranked at the price of the Protected Quotation it locked or crossed but can be ranked closer to its original limit price, the Non-Displayed Order will be adjusted to the new midpoint of the NBBO.¹⁵

¹³ Phlx notes that a Non-Displayed Order will always be adjusted in this scenario, regardless of its port setting.

¹⁴ For example, if the National Best Bid is \$10.00 and the National Best Offer is \$10.10, and a Non-Displayed Order to buy at \$10.15 is entered, the Non-Displayed Order will be ranked at \$10.05. If the National Best Offer then changes to \$10.15, the Non-Displayed Order may either be adjusted to rank at \$10.10, or may be cancelled back to the Participant.

¹⁵ For example, if the National Best Bid is \$10.00 and the National Best Offer is \$10.10, and a Non-Displayed Order to buy at \$10.10 is entered, the Non-Displayed Order will be ranked at \$10.05. If the National Best Bid then changes to \$10.05, the price of the Non-Displayed Order will be adjusted to \$10.075.

If, after being posted on the Phlx Book, the Non-Displayed Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Non-Displayed Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Non-Displayed Order will be cancelled.¹⁶

Post-Only Orders

Currently, Rule 3317(d)(4) states that a Post-Only Order in a Test Group Pilot Security will operate as described in Rule 3301A(b)(4) except as provided under this paragraph. For orders that are not attributable, if the limit price of a buy (sell) Post-Only Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of the NBBO.

Phlx proposes to augment this provision to clarify the behavior of Post-Only Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Non-Attributable Post-Only Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Phlx Book.

Phlx notes that a Non-Displayed Order entered through OUCH or FLITE in either a Control Group Security, a Test Group One Pilot Security or a Test Group Two Pilot Security would be ranked at the locking price upon entry.

¹⁶ For example, if the National Best Bid is \$10.00 and the National Best Offer is \$10.10, and a Non-Displayed Order to buy at \$10.10 is entered, the Non-Displayed Order will be ranked at \$10.05. If the National Best Offer then changes to \$10.05, the Non-Displayed Order will be cancelled back to the Participant.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price will no longer lock a Protected Quotation, the Post-Only Order will be adjusted to rank and display at its original entered limit price.¹⁷

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Post-Only Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.

If, after being posted on the Phlx Book, the non-displayed price of a resting Post-Only Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Post-Only Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Post-Only Order will be cancelled.

Commentary .14

In removing the current re-pricing functionality, Commentary .014, which addresses the behavior of current treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities, is no longer necessary.¹⁸ The Exchange therefore proposes to delete this Commentary from the Rule.

¹⁷ Phlx notes that a Post-Only Order will always be adjusted in this scenario, regardless of its port setting.

¹⁸ Under Commentary .14, the current treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three securities is as follows:

Finally, Phlx proposes to add language to Rule 3317(d)(1) to clarify the treatment of orders in a Test Group Three Security entered through the RASH or FIX protocols. Specifically, subject to the provisions set forth in the remainder of Rule 3317(d), if the entered limit price of an Order in a Test Group Three Pilot Security, entered through RASH or FIX, locked or crossed a Protected Quotation and the NBBO changes so that the Order can be ranked closer to its original entered limit price, the price of the Order will be adjusted repeatedly in accordance with changes to the NBBO. Phlx is proposing to make this change to clarify the current treatment of orders in Test Group Three Pilot Securities entered through RASH or FIX.

Until December 12, 2016, the treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three securities shall be as follows:

Following entry, and if market conditions allow, a Price to Comply Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Price to Display Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Display Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price.

Following entry, and if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Exchange Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁰ in particular, in that it is designed to promote just and equitable principles of trade, 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.

The Exchange believes that the proposed rule change is consistent with the Act because it clarifies the changes the Exchange is making to the handling of certain Order Types necessary to implement the requirements of the Plan on its System and, in the case of the changes of Rule 3317(d)(1), to clarify the current treatment of orders in Test Group Three Pilot Securities entered through RASH or FIX.

As a result of removing the current re-pricing functionality that applies to certain Order Types in Test Group Three Securities entered through the OUCH and FLITE protocols, and due to the different functionality of the OUCH and FLITE protocols in comparison to the other applicable Phlx protocols, these Order Types will behave differently than is currently set forth in Rule 3317 when entered through the OUCH or FLITE protocols in certain instances. As noted above, these changes will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE when the Order has been ranked at a midpoint of the NBBO that then becomes impermissible due to changes in the NBBO. These changes also will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

OUCH and FLITE in scenarios where the subsequent movement of the NBBO implicates the Trade-at prohibition with respect to the resting order.

By clarifying the behavior of certain Order Types in Test Group Three Pilot Securities entered through the OUCH or FLITE protocols, the proposal will help allow market participants to continue to trade NMS Stocks, within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

More generally, Phlx also notes that the Plan, which was approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act,²¹ provides the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

Finally, Phlx believes that the proposal is consistent with the Act because the proposed functionality will more closely align the handling of Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols for Test Group Three Pilot Securities with the handling of such Orders

²¹ 15 U.S.C. 78k-1.

entered through the OUCH or FLITE protocols for Control Group, Test Group One and Test Group Two Securities than the current functionality in place for these Orders.

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. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan, and must take the same steps that the Exchange has to conform its existing rules to the requirements of the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)²² of the Act and Rule 19b-4(f)(6) thereunder²³ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

Phlx does not believe that this proposal will significantly affect the protection of investors or the public interest; and does not impose any significant burden on competition. As noted above, the purpose of this proposal is to clarify, as a result of removing the current re-pricing functionality in place for certain Orders entered through the OUCH and FLITE protocols, the behavior of Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered in Test Group Three Pilot Securities through the OUCH or FLITE protocols where the Order locks or crosses a Protected Quotation. Phlx also believes that the proposed functionality will not significantly impact the handling of orders by Phlx or the data gathered pursuant to the Pilot.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²² 15 U.S.C. 78s(b)(3)(A)(iii).

²³ 17 CFR 240.19b-4(f)(6).

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the five-day pre-filing requirement and the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that this proposed change will be in operative as of December 14, 2016, which Phlx had previously specified as the anticipated date by which the process of removing the current re-pricing functionality for certain Test Group Three securities would be complete.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission
No 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-2016-121)

December __, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 3317 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot)

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 13, 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 Rule 3317 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot) relating to the handling to certain Order Types in Test Group Three Pilot Securities in connection with the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan” or “Pilot”).³ Relatedly, the Exchange also proposes to delete Commentary .14, which addresses the current handling of those Order Types. Finally, Phlx proposes to add language to Rule 3317(d)(1) to clarify the treatment of orders in a Test Group Three Security entered through the RASH or FIX protocols.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

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.

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

On September 7, 2016, the Exchange filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change ("Proposal") to adopt paragraph (d) and Commentary .12 to Exchange Rule 3317 to describe changes to system functionality necessary to implement the Plan. The Exchange also proposed amendments to Rule 3317(a) and (c) to clarify how the Trade-at exception may be satisfied. The SEC published the Proposal in the Federal Register for notice and comment on September 20, 2016.⁴ Phlx subsequently filed three Partial Amendments to clarify aspects of the Proposal. The Commission approved the Proposal, as amended, on October 7, 2016.⁵

⁴ See Securities Exchange Act Release No. 78835 (September 14, 2016), 81 FR 64552 (September 20, 2016) (SR-Phlx-2016-92).

⁵ See Securities Exchange Act Release No. 79074 (October 7, 2016) (SR-Phlx-2016-92).

In SR-Phlx-2016-92, Phlx had initially proposed a re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities.⁶ Phlx subsequently determined that it would not offer this re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols in Group Three Pilot Securities. As part of Partial Amendment No. 2 to SR-Phlx-2016-92, Phlx proposed to delete the relevant language from Rule 3317 related to this re-pricing functionality.

In that amendment, Phlx noted that this change would only impact the treatment of Price to Comply Orders, Non-Displayed Orders, and Post-Only orders that are submitted through the OUCH and FLITE protocols in Test Group Three Pilot Securities, as these types of Orders that are currently submitted to Phlx through the RASH or FIX protocols are already subject to this re-pricing functionality and will remain subject to this functionality under the Pilot.

In the Amendment, Phlx further noted that its systems are currently programmed so that Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities may be

⁶ As originally proposed, Rule 3317(d)(2) stated that Price to Comply Orders in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price. Rule 3317(d)(3) stated that, if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price. Rule 3317(d)(4) stated that, if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Phlx Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

adjusted repeatedly to reflect changes to the NBBO and/or the best price on the Phlx book. Phlx stated that it was re-programming its systems to remove this functionality for Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities. In the Amendment, Phlx stated that it anticipated that this re-programming shall be completed no later than November 30, 2016. If it appeared that this functionality would remain operational by October 17, 2016, Phlx indicated that it would file a proposed rule change with the SEC and will provide notice to market participants sufficiently in advance of that date to provide effective notice. The rule change and the notice to market participants would describe the current operation of the Phlx systems in this regard, and the timing related to the re-programming.

On October 17, 2016, Phlx filed a proposal to extend the date by which it would complete the re-programming of its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols.⁷ In that proposal, Phlx stated that it anticipated that this re-programming shall be complete on or before October 31, 2016.⁸ As Phlx continued to re-program its

⁷ See Securities Exchange Act Release No. 79156 (October 25, 2016) (SR-Phlx-2016-106).

Subsequent to the approval of SR-Phlx-2016-92, Phlx become aware that this re-pricing functionality also applies to Price to Display Orders that are entered through the OUCH and FLITE protocols in Test Group Three Securities, and amended Commentary .14 to indicate that Price to Display Orders will be treated in the same manner as Price to Comply Orders under the re-pricing functionality.
Id.

⁸ Id.

systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols, it extended the date by which the re-programming shall be complete to the current date of December 12, 2016.⁹

Phlx has now completed re-programming its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols. However, as a result of removing the re-pricing functionality, there are instances, due to the different functionality of the OUCH and FLITE protocols in comparison to the other applicable Phlx protocols, where the behavior of certain Order Types entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities will differ from the behavior of those Order Types as set forth in Rule 3317; specifically, the behavior of Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols when the Order locks or crosses a Protected Quotation. Phlx is therefore amending Rule 3317 to clarify these differences. Although the changes made to Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE reflect the different functionality of the OUCH and FLITE protocols in comparison with the other Phlx protocols, the proposed changes treat Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through OUCH and FLITE protocols in Test Group

⁹ See Securities Exchange Release Nos. 79261 (November 8, 2016), 81 FR 80134 (November 15, 2016) (SR-Phlx-2016-110) (extending current re-pricing functionality to November 14, 2016); 79407 (November 28, 2016), 81 FR 87089 (December 2, 2016) (SR-Phlx-2016-114) (extending current re-pricing functionality to December 12, 2016).

Three Securities as consistently as possible with such orders entered through OUCH and FLITE in Control Group Securities, and Test Group One and Test Group Two Securities. These changes will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE when the Order has been ranked at a midpoint of the NBBO that then becomes impermissible due to changes in the NBBO.

Price to Comply Orders

Currently, Rule 3317(d)(2) states that a Price to Comply Order in a Test Group Pilot Security will operate as described in Rule 3301A(b)(1) except as provided under this paragraph. If a Price to Comply Order for a Test Group Three Pilot Security is partially executed upon entry and the remainder would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. If the Order is not executable against any previously posted orders on the Exchange Book, and the limit price of a buy (sell) Price to Comply Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of NBBO.

Phlx proposes to augment this provision to clarify the behavior of Price to Comply Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Price to Comply Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Phlx Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price will no longer lock a Protected Quotation, the Price to Comply Order will be adjusted to rank and display at its original entered limit price.¹⁰

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Price to Comply Order, based on the participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.

If, after being posted on the Phlx Book, the non-displayed price of a Price to Comply Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Price to Comply Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Price to Comply Order will be cancelled.¹¹

¹⁰ Phlx notes that a Price to Comply Order will always be adjusted in this scenario, regardless of its port setting.

¹¹ For example, if the National Best Bid is \$10.00 and the National Best Offer is \$10.10, and a Price to Comply Order to buy at \$10.15 is entered, the Price to Comply Order will be displayed at \$10.05 and ranked at \$10.075. If the National Best Offer then changes to \$10.15, the Price to Comply Order will be adjusted to rank at \$10.10, and will remain displayed at \$10.05. If the National Best Offer subsequently changes to \$10.10, the Price to Comply Order will be cancelled.

Phlx notes that a Price to Comply Order, Non-Displayed Order, or Post-Only Order entered through OUCH or FLITE in either a Control Group Security, a Test Group One Pilot Security or a Test Group Two Pilot Security would only cancel if the resting order is crossed (not locked) by a Protected Quotation due to a change in the NBBO.

Non-Displayed Orders

Currently, Rule 3317(d)(3) states that a Non-Displayed Order in a Test Group Pilot Security will operate as described in Rule 3301A(b)(3) except as provided under this paragraph. A resting Non-Displayed Order in a Test Group Three Pilot security cannot execute at the price of a Protected Quotation of another market center unless the incoming Order otherwise qualifies for an exception to the Trade-at prohibition provided under Rule 3317(c)(3)(D). If the limit price of a buy (sell) Non-Displayed Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will be ranked on the Exchange Book at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). For a Non-Displayed Order in a Test Group Three Pilot Security entered through RASH or FIX, if after being posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be repriced to a price that is at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp. For a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE, if after such a Non-Displayed Order is posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be cancelled back to the Participant.

Phlx proposes to amend this provision to clarify the behavior of Non-Displayed Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Phlx Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price would no longer lock a Protected Quotation, the Non-Displayed Order will be adjusted to rank at its original entered limit price.¹²

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed.¹³

If entered at a price that locked or crossed a Protected Quotation, and if the NBBO changes such that it cannot be ranked at the price of the Protected Quotation it locked or crossed but can be ranked closer to its original limit price, the Non-Displayed Order will be adjusted to the new midpoint of the NBBO.¹⁴

¹² Phlx notes that a Non-Displayed Order will always be adjusted in this scenario, regardless of its port setting.

¹³ For example, if the National Best Bid is \$10.00 and the National Best Offer is \$10.10, and a Non-Displayed Order to buy at \$10.15 is entered, the Non-Displayed Order will be ranked at \$10.05. If the National Best Offer then changes to \$10.15, the Non-Displayed Order may either be adjusted to rank at \$10.10, or may be cancelled back to the Participant.

¹⁴ For example, if the National Best Bid is \$10.00 and the National Best Offer is \$10.10, and a Non-Displayed Order to buy at \$10.10 is entered, the Non-Displayed Order will be ranked at \$10.05. If the National Best Bid then changes to \$10.05, the price of the Non-Displayed Order will be adjusted to \$10.075.

If, after being posted on the Phlx Book, the Non-Displayed Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Non-Displayed Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Non-Displayed Order will be cancelled.¹⁵

Post-Only Orders

Currently, Rule 3317(d)(4) states that a Post-Only Order in a Test Group Pilot Security will operate as described in Rule 3301A(b)(4) except as provided under this paragraph. For orders that are not attributable, if the limit price of a buy (sell) Post-Only Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of the NBBO.

Phlx proposes to augment this provision to clarify the behavior of Post-Only Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Non-Attributable Post-Only Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Phlx Book.

Phlx notes that a Non-Displayed Order entered through OUCH or FLITE in either a Control Group Security, a Test Group One Pilot Security or a Test Group Two Pilot Security would be ranked at the locking price upon entry.

¹⁵ For example, if the National Best Bid is \$10.00 and the National Best Offer is \$10.10, and a Non-Displayed Order to buy at \$10.10 is entered, the Non-Displayed Order will be ranked at \$10.05. If the National Best Offer then changes to \$10.05, the Non-Displayed Order will be cancelled back to the Participant.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price will no longer lock a Protected Quotation, the Post-Only Order will be adjusted to rank and display at its original entered limit price.¹⁶

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Post-Only Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.

If, after being posted on the Phlx Book, the non-displayed price of a resting Post-Only Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Post-Only Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Post-Only Order will be cancelled.

Commentary .14

In removing the current re-pricing functionality, Commentary .014, which addresses the behavior of current treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities, is no longer necessary.¹⁷ The Exchange therefore proposes to delete this Commentary from the Rule.

¹⁶ Phlx notes that a Post-Only Order will always be adjusted in this scenario, regardless of its port setting.

¹⁷ Under Commentary .14, the current treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three securities is as follows:

Finally, Phlx proposes to add language to Rule 3317(d)(1) to clarify the treatment of orders in a Test Group Three Security entered through the RASH or FIX protocols. Specifically, subject to the provisions set forth in the remainder of Rule 3317(d), if the entered limit price of an Order in a Test Group Three Pilot Security, entered through RASH or FIX, locked or crossed a Protected Quotation and the NBBO changes so that the Order can be ranked closer to its original entered limit price, the price of the Order will be adjusted repeatedly in accordance with changes to the NBBO. Phlx is proposing to make this change to clarify the current treatment of orders in Test Group Three Pilot Securities entered through RASH or FIX.

Until December 12, 2016, the treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three securities shall be as follows:

Following entry, and if market conditions allow, a Price to Comply Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Price to Display Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Display Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price.

Following entry, and if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Exchange Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to promote just and equitable principles of trade, 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.

The Exchange believes that the proposed rule change is consistent with the Act because it clarifies the changes the Exchange is making to the handling of certain Order Types necessary to implement the requirements of the Plan on its System and, in the case of the changes of Rule 3317(d)(1), to clarify the current treatment of orders in Test Group Three Pilot Securities entered through RASH or FIX.

As a result of removing the current re-pricing functionality that applies to certain Order Types in Test Group Three Securities entered through the OUCH and FLITE protocols, and due to the different functionality of the OUCH and FLITE protocols in comparison to the other applicable Phlx protocols, these Order Types will behave differently than is currently set forth in Rule 3317 when entered through the OUCH or FLITE protocols in certain instances. As noted above, these changes will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE when the Order has been ranked at a midpoint of the NBBO that then becomes impermissible due to changes in the NBBO. These changes also will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

OUCH and FLITE in scenarios where the subsequent movement of the NBBO implicates the Trade-at prohibition with respect to the resting order.

By clarifying the behavior of certain Order Types in Test Group Three Pilot Securities entered through the OUCH or FLITE protocols, the proposal will help allow market participants to continue to trade NMS Stocks, within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

More generally, Phlx also notes that the Plan, which was approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act,²⁰ provides the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

Finally, Phlx believes that the proposal is consistent with the Act because the proposed functionality will more closely align the handling of Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols for Test Group Three Pilot Securities with the handling of such Orders

²⁰ 15 U.S.C. 78k-1.

entered through the OUCH or FLITE protocols for Control Group, Test Group One and Test Group Two Securities than the current functionality in place for these Orders.

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. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan, and must take the same steps that the Exchange has to conform its existing rules to the requirements of the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

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

to Section 19(b)(3)(A)(iii) of the Act²¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.²²

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. Please include File Number SR-Phlx-2016-121 on the subject line.

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 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.

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-2016-121. 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-2016-121 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.²³

Robert W. Errett
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

NASDAQ PHLX Rules

* * * * *

NASDAQ OMX PSX RULES

* * * * *

3317. Compliance with Regulation NMS Plan to Implement a Tick Size Pilot

(a) – (c) No Change.

(d) Operation of Order Types and Order Attributes

This section sets forth PSX's specific procedures for handling, executing, re-pricing and displaying of certain Order Types and Order Attributes applicable to Pilot Securities. Unless otherwise indicated, this section applies to orders in all three Test Group Pilot Securities.

(1) All Order Types. Any Order Type in a security of any of the Test Groups that requires a price and does not otherwise qualify for an exception, will not be accepted if it is in a minimum price increment other than \$0.05. This minimum price increment applies to repricing and rounding by the System, unless otherwise noted below.

Subject to the provisions below, if the entered limit price of an Order in a Test Group Three Pilot Security, entered through RASH or FIX, locked or crossed a Protected Quotation and the NBBO changes so that the Order can be ranked closer to its original entered limit price, the price of the Order will be adjusted repeatedly in accordance with changes to the NBBO.

(2) Price to Comply Order. A Price to Comply Order in a Test Group Pilot Security will operate as described in Rule 3301A(b)(1) except as provided under this paragraph. If a Price to Comply Order for a Test Group Three Pilot Security is partially executed upon entry and the remainder would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. If the Order is not executable against any previously posted orders on the Exchange Book, and the limit price of a buy (sell) Price to Comply Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of NBBO.

A Price to Comply Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- If entered at a price that locked a Protected Quotation, and if the NBBO changes such that it can be ranked and displayed at the price of the Protected Quotation that it locked, the Price to Comply Order will be adjusted to rank and display at its original entered limit price.
- If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Price to Comply Order, based on the participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.
- If, after being posted on the Exchange Book, the non-displayed price of a Price to Comply Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Price to Comply Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Price to Comply Order will be cancelled.

(3) Non-Displayed Order. A Non-Displayed Order in a Test Group Pilot Security will operate as described in Rule 3301A(b)(3) except as provided under this paragraph. A resting Non-Displayed Order in a Test Group Three Pilot security cannot execute at the price of a Protected Quotation of another market center unless the incoming Order otherwise qualifies for an exception to the Trade-at prohibition provided under Rule 3317(c)(3)(D). If the limit price of a buy (sell) Non-Displayed Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will be ranked on the Exchange Book at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). If a resting [For a]Non-Displayed Order in a Test Group Three Pilot Security entered through RASH or FIX[,] becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if [after being posted to the Exchange Book, the NBBO changes so that]the Non-Displayed Order is at an impermissible price under [would no longer be executable at its posted price due to the requirements of]Regulation NMS or the Plan, the Non-Displayed Order will be repriced to a price that is at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp.

For a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE, if after such a Non-Displayed Order is posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would no longer be

executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be cancelled back to the Participant.

A Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- If entered at a price that locked a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation that it locked, the Non-Displayed Order will be adjusted to rank at its original entered limit price.
- If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed.
- If entered at a price that locked or crossed a Protected Quotation, and if the NBBO changes such that it cannot be ranked at the price of the Protected Quotation it locked or crossed but can be ranked closer to its original limit price, the Non-Displayed Order will be adjusted to the new midpoint of the NBBO.
- If, after being posted on the Exchange Book, the Non-Displayed Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Non-Displayed Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Non-Displayed Order will be cancelled.

(4) Post-Only Order. A Post-Only Order in a Test Group Pilot Security will operate as described in Rule 3301A(b)(4) except as provided under this paragraph. For orders that are not attributable, if the limit price of a buy (sell) Post-Only Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of the NBBO.

A Non-Attributable Post-Only Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the Exchange Book:

- If entered at a price that locked a Protected Quotation, and if the NBBO changes such that it can be ranked and displayed at the price of the Protected Quotation that it locked, the Post-Only Order will be adjusted to rank and display at its original entered limit price.
- If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it

crossed, the Post-Only Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.

- If, after being posted on the Exchange Book, the non-displayed price of a resting Post-Only Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Post-Only Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Post-Only Order will be cancelled.

(5) – (9) No Change.

Commentary:

.01 through .13 No Change.

[.14 Until December 12, 2016, the treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three securities shall be as follows:

Following entry, and if market conditions allow, a Price to Comply Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Price to Display Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Display Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price.

Following entry, and if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Exchange Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.]

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