

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

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| Initial * <input checked="" type="checkbox"/> | Amendment * <input type="checkbox"/> | Withdrawal <input type="checkbox"/> | Section 19(b)(2) * <input type="checkbox"/> | Section 19(b)(3)(A) * <input checked="" type="checkbox"/> | Section 19(b)(3)(B) * <input type="checkbox"/> |
| Pilot <input type="checkbox"/> | | | Rule | | |
| Extension of Time Period for Commission Action * <input type="checkbox"/> | | Date Expires * <input type="text"/> | <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) | |
| | | | <input type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5) | |
| | | | <input type="checkbox"/> 19b-4(f)(3) | <input checked="" type="checkbox"/> 19b-4(f)(6) | |

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| 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"/> |

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| 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 *).

Proposal to amend Rule 3317 to modify certain data collection requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program.

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 * Sean Last Name * Bennett
 Title * Principal Associate General Counsel
 E-mail * Sean.Bennett@nasdaq.com
 Telephone * (301) 978-8499 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)
 Executive Vice President and General Counsel

Date 08/29/2016
 By Edward S. Knight
 (Name *)

edward.knight@nasdaq.com

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 *

Add Remove View

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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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

Add Remove View

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 to modify certain data collection requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).³

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 of the Exchange (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.

The Exchange has requested that the SEC waive the 30-day operative period so that the proposed rule change can become operative on August 30, 2016.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

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

T. Sean Bennett
Principal Associate General Counsel
Nasdaq, Inc.
(301) 978-8499

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

a. Purpose

On August 25, 2014, Phlx and several other self-regulatory organizations (the “Participants”) filed with the Commission, pursuant to Section 11A of the Act⁴ and Rule 608 of Regulation NMS thereunder,⁵ the Plan to Implement a Tick Size Pilot Program (the “Plan”).⁶ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.⁷ The Plan was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.⁸

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to

⁴ 15 U.S.C. 78k-1.

⁵ 17 CFR 242.608.

⁶ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁷ See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

⁸ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Plan provides for the creation of a group of Pilot Securities, which shall be placed in a control group and three separate test groups, with each subject to varying quoting and trading increments. Pilot Securities in the control group will be quoted at the current tick size increment of \$0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group will be quoted in \$0.05 minimum increments but will continue to trade at any price increment that is currently permitted.⁹ Pilot Securities in the second test group (“Test Group Two”) will be quoted in \$0.05 minimum increments and will trade at \$0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.¹⁰ Pilot Securities in the third test group (“Test Group Three”) will be subject to the same quoting and trading increments as Test Group Two, and also will be subject to the “Trade-at” requirement to prevent price matching by a market participant that is not displaying at the price of a Trading Center’s “Best Protected Bid” or “Best Protected Offer,” unless an enumerated exception applies.¹¹ In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS¹² will apply to the Trade-at requirement.

⁹ See Section VI(B) of the Plan.

¹⁰ See Section VI(C) of the Plan.

¹¹ See Section VI(D) of the Plan.

¹² 17 CFR 242.611.

The Plan also requires a Trading Center¹³ or a Market Maker¹⁴ to collect and transmit certain data to its designated examining authority (“DEA”), and requires DEAs to transmit this data to the Commission. Participants that operate a Trading Center also are required under the Plan to collect certain data, which is then transmitted directly to the Commission. With respect to Trading Centers, Appendix B.I to the Plan (Market Quality Statistics) requires a Trading Center to submit to the Participant that is its DEA a variety of market quality statistics. Appendix B.II to the Plan (Market and Marketable Limit Order Data) requires a Trading Center to submit information to its DEA relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, and the National Best Bid or National Best Offer (“NBBO”) quoted price.

With respect to Market Makers, Appendix B.III requires a Participant that is a national securities exchange to collect daily Market Maker Registration statistics. Appendix B.IV requires a Participant to collect data related to Market Maker participation with respect to each Market Maker engaging in trading activity on a Trading Center operated by the Participant. Appendix C.I requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA.

¹³ The Plan incorporates the definition of a “Trading Center” from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a “Trading Center” as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” See 17 CFR 242.600(b).

¹⁴ The Plan defines a Market Maker as “a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.”

Appendix C.II requires the Participant, as DEA, to aggregate the Appendix C.I data, and to transmit this data to the Commission.

The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.¹⁵ On November 6, 2015, the SEC exempted the Participants from implementing the Pilot until October 3, 2016.¹⁶ As set forth in Appendices B and C to the Plan, data that is reported pursuant to the appendices shall be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016.

On December 9, 2015, FINRA, on behalf of the Plan Participants, submitted an exemptive request to the Commission, seeking an exemption from certain data collection and reporting requirements set forth in the Plan.¹⁷ On February 17, 2016, the Commission granted Participants exemptive relief from complying with certain data collection and reporting requirements in the Plan.¹⁸ On March 23, 2016, the Exchange

¹⁵ See Approval Order at 27533 and 27545.

¹⁶ See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4-657).

¹⁷ See Letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated December 9, 2015 (“Exemptive Request”).

¹⁸ See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated February 17, 2016.

filed with the Commission a proposed rule change to adopt Rule 3317 to implement the data collection requirements of the Plan, which was effective on April 4, 2016.¹⁹

The Exchange now proposes to further amend Rule 3317 to modify additional data collection and reporting requirements.²⁰ First, Appendix B.I.a(21) through B.I.a(27) currently requires that Trading Centers report the cumulative number of shares of cancelled orders during a specified duration of time after receipt of the order that was cancelled. The Exchange and the other Participants believe that, for purposes of reporting cancelled orders, it is appropriate to categorize unexecuted Immediate or Cancel orders separately as one bucket irrespective of the duration of time after order receipt, i.e., without a time increment, to better differentiate orders cancelled subsequent to entry from those where the customer's intent prior to order entry was to cancel the order if no execution could be immediately obtained. The Exchange, therefore, proposes to modify Commentary .04 to provide that unexecuted Immediate or Cancel orders shall be categorized separately for purposes of Appendix B.I.a(21) through B.I.a(27).

The second change relates to the reporting of daily market quality statistics pursuant to Appendix B.I. Currently, Appendix B.I sets forth categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. The Exchange and the other Participants have determined that it is appropriate to include an order type for limit orders priced more than \$0.10 away from the NBBO for purposes of Appendix B

¹⁹ See Securities Exchange Act Release No. 77458 (March 28, 2016), 81 FR 18919 (April 1, 2016) (SR-Phlx-2016-39).

²⁰ In connection with this proposed rule change and others made by Participants, FINRA intends to file an exemptive request on behalf of Participants seeking relief from certain of the Plan's data collection requirements.

reporting. The Exchange therefore proposes to amend Commentary .06 to provide that limit orders priced more than \$0.10 away from the NBBO shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (22). These orders are not currently required to be reported pursuant to Appendix B, and the Exchange and the other Participants believe that requiring the reporting of such orders will produce a more comprehensive data set.

The third change relates to the reporting of market quality statistics pursuant to Appendix B.I for a variety of order types, including inside-the-quote resting limit orders (12), at-the-quote resting limit orders (13), and near-the-quote resting limit orders (within \$0.10 of the NBBO) (14). The Exchange and the other Participants believe that it is appropriate to require Trading Centers to report all orders that fall within these categories, and not just those orders that are “resting.” The Exchange, therefore, proposes to amend Commentary .06 to make this change.

In the fourth change, the Exchange proposes to add new Commentary .09 to modify the manner in which market maker participation statistics are calculated. Currently, Appendix B.IV provides that market maker participation statistics shall be calculated based on share participation, trade participation, cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation, and outside-the-quote share (trade) participation. The Exchange and the other Participants have determined that it is appropriate to add the count of the number of Market Makers used in the calculation of share (trade) participation to each category. The Exchange is, therefore, proposing this change as part of Commentary .09. In addition, Appendix B.IV(b) and (c) currently require that, when aggregating across

Market Makers, share participation and trade participation shall be calculated using the share-weighted average and trade-weighted average, respectively. The Exchange and the other Participants believe that it is more appropriate to calculate share and trade participation by providing the total count of shares or trades, as applicable, rather than weighted averages, and the Exchange is therefore proposing this change as part of Commentary .09.

The fifth change relates to the NBBO that a Trading Center is required to use when performing certain quote-related calculations. When calculating cross-quote share (trade) participation pursuant to Appendix B.IV(d) and inside-the-quote share (trade) participation pursuant to Appendix B.IV(e), the Plan requires the Trading Center to utilize the NBBO at the time of the trade for both share and trade participation calculations. When calculating at-the-quote share (trade) participation and outside-the-quote share (trade) participation pursuant to Appendix B.IV(f) and (g), the Plan allows the Trading Center to utilize the NBBO at the time of or immediately before the trade for both share and trade participation calculations. The Exchange and the other Participants believe that it is appropriate to calculate all quote participation (cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation and outside-the-quote share (trade) participation) solely by reference to the NBBO in effect immediately prior to the trade. The Exchange, therefore, proposes to make this change as part of Commentary .09.

Finally, the Exchange proposes to change the end date until which the Pre-Pilot Data Collection Securities shall be used to fulfill the Plan's data collection requirements. Currently, Commentary .10 provides that Pre-Pilot Data Collection Securities are the

securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C to the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Exchange and the other Participants believe that it is appropriate to use the Pilot Securities to satisfy the Plan's data collection requirements prior to the commencement of the Pilot. Accordingly, the Exchange is revising Commentary .10 (which will be re-numbered as Commentary .11) to provide that the Pre-Pilot Data Collection Securities shall be used to satisfy the Plan's data collection requirements through thirty-one days prior to the Pilot Period, after which time the Pilot Securities shall be used for purposes of the data collection requirements.²¹ As noted in Item 2 of this filing, the Exchange has filed the proposed rule change for immediate effectiveness. The Exchange has requested that the SEC waive the 30-day operative period so that the proposed rule change can become operative on August 30, 2016.

²¹ After regular trading hours on September 2, 2016, the national securities exchanges will establish which securities will be included as Pilot Securities for purposes of the Plan. The Exchange and the other Participants have determined that members should use the Pilot Securities list for data collection purposes once it becomes available. Thus, the proposed rule change requires that, beginning thirty days prior to the first day of the Pilot Period – i.e., September 3, 2016 – The Exchange and Exchange members will comply with the data collection obligations of the Plan by collecting data on the Pilot Securities. As a result, beginning on September 3, 2016, members must migrate from using the Exchange's published Pre-Pilot Data Collection Security list and begin using the Pilot Securities list. September 2, 2016 will be the last day that members use the Pre-Pilot Data Collection Security list.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²² in general, and furthers the objectives of Section 6(b)(5) of the Act,²³ 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, and Section 6(b)(8) of the Act,²⁴ which requires that the Exchange not impose any burden on competition that is not necessary or appropriate.

The Exchange believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan.

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

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78f(b)(8).

Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that, other than the change to require use of the Pilot Securities beginning thirty days prior to the beginning of the Pilot Period, the proposed changes will not affect the data collection and reporting requirements for members that operate Trading Centers; the proposed changes will only affect how the Exchange and Participants that operate Trading Centers collect and report data. The Exchange notes that, with respect to the change to require the use of the Pilot Securities beginning thirty days prior to the start of the Pilot Period, the proposed change reduces the number of securities on which affected members otherwise would have been required to collect data pursuant to the Plan and Rule 3317. In addition, the proposed rule change applies equally to all similarly situated members. Therefore, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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)²⁵

²⁵ 15 U.S.C. 78s(b)(3)(A).

of the Act and Rule 19b-4(f)(6) thereunder²⁶ 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.

The Exchange requests that the Commission waive the five-day pre-filing requirement and the 30-day period for the proposed rule change to become operative, as set forth in Rule 19b-4(f)(6),²⁷ so that the proposed rule change can become operative on August 30, 2016.

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

The Exchange is filing the proposed rule change concurrently with other Participants to amend respective rules concerning the data collection requirements of the Plan.

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.

²⁶ 17 CFR 240.19b-4(f)(6).

²⁷ Id.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2016-90)

August __, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 3317

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 August 29, 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 to modify certain data collection requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).³

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.

³ 17 CFR 240.19b-4(f)(6)(iii).

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 August 25, 2014, Phlx and several other self-regulatory organizations (the "Participants") filed with the Commission, pursuant to Section 11A of the Act⁴ and Rule 608 of Regulation NMS thereunder,⁵ the Plan to Implement a Tick Size Pilot Program (the "Plan").⁶ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.⁷ The Plan was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.⁸

⁴ 15 U.S.C. 78k-1.

⁵ 17 CFR 242.608.

⁶ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁷ See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

⁸ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Plan provides for the creation of a group of Pilot Securities, which shall be placed in a control group and three separate test groups, with each subject to varying quoting and trading increments. Pilot Securities in the control group will be quoted at the current tick size increment of \$0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group will be quoted in \$0.05 minimum increments but will continue to trade at any price increment that is currently permitted.⁹ Pilot Securities in the second test group (“Test Group Two”) will be quoted in \$0.05 minimum increments and will trade at \$0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.¹⁰ Pilot Securities in the third test group (“Test Group Three”) will be subject to the same quoting and trading increments as Test Group Two, and also will be subject to the “Trade-at” requirement to prevent price matching by a market participant that is not displaying at the price of a Trading Center’s “Best Protected Bid” or “Best Protected Offer,” unless an enumerated exception applies.¹¹ In addition to the exceptions provided under Test Group

⁹ See Section VI(B) of the Plan.

¹⁰ See Section VI(C) of the Plan.

¹¹ See Section VI(D) of the Plan.

Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS¹² will apply to the Trade-at requirement.

The Plan also requires a Trading Center¹³ or a Market Maker¹⁴ to collect and transmit certain data to its designated examining authority (“DEA”), and requires DEAs to transmit this data to the Commission. Participants that operate a Trading Center also are required under the Plan to collect certain data, which is then transmitted directly to the Commission. With respect to Trading Centers, Appendix B.I to the Plan (Market Quality Statistics) requires a Trading Center to submit to the Participant that is its DEA a variety of market quality statistics. Appendix B.II to the Plan (Market and Marketable Limit Order Data) requires a Trading Center to submit information to its DEA relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, and the National Best Bid or National Best Offer (“NBBO”) quoted price.

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¹² 17 CFR 242.611.

¹³ The Plan incorporates the definition of a “Trading Center” from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a “Trading Center” as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” See 17 CFR 242.600(b).

¹⁴ The Plan defines a Market Maker as “a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.”

Center operated by the Participant. Appendix C.I requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Appendix C.II requires the Participant, as DEA, to aggregate the Appendix C.I data, and to transmit this data to the Commission.

The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.¹⁵ On November 6, 2015, the SEC exempted the Participants from implementing the Pilot until October 3, 2016.¹⁶ As set forth in Appendices B and C to the Plan, data that is reported pursuant to the appendices shall be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016.

On December 9, 2015, FINRA, on behalf of the Plan Participants, submitted an exemptive request to the Commission, seeking an exemption from certain data collection and reporting requirements set forth in the Plan.¹⁷ On February 17, 2016, the Commission granted Participants exemptive relief from complying with certain data collection and reporting requirements in the Plan.¹⁸ On March 23, 2016, the Exchange

¹⁵ See Approval Order at 27533 and 27545.

¹⁶ See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4-657).

¹⁷ See Letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated December 9, 2015 (“Exemptive Request”).

¹⁸ See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated February 17, 2016.

filed with the Commission a proposed rule change to adopt Rule 3317 to implement the data collection requirements of the Plan, which was effective on April 4, 2016.¹⁹

The Exchange now proposes to further amend Rule 3317 to modify additional data collection and reporting requirements.²⁰ First, Appendix B.I.a(21) through B.I.a(27) currently requires that Trading Centers report the cumulative number of shares of cancelled orders during a specified duration of time after receipt of the order that was cancelled. The Exchange and the other Participants believe that, for purposes of reporting cancelled orders, it is appropriate to categorize unexecuted Immediate or Cancel orders separately as one bucket irrespective of the duration of time after order receipt, i.e., without a time increment, to better differentiate orders cancelled subsequent to entry from those where the customer's intent prior to order entry was to cancel the order if no execution could be immediately obtained. The Exchange, therefore, proposes to modify Commentary .04 to provide that unexecuted Immediate or Cancel orders shall be categorized separately for purposes of Appendix B.I.a(21) through B.I.a(27).

The second change relates to the reporting of daily market quality statistics pursuant to Appendix B.I. Currently, Appendix B.I sets forth categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. The Exchange and the other Participants have determined that it is appropriate to include an order type for limit orders priced more than \$0.10 away from the NBBO for purposes of Appendix B

¹⁹ See Securities Exchange Act Release No. 77458 (March 28, 2016), 81 FR 18919 (April 1, 2016) (SR-Phlx-2016-39).

²⁰ In connection with this proposed rule change and others made by Participants, FINRA intends to file an exemptive request on behalf of Participants seeking relief from certain of the Plan's data collection requirements.

reporting. The Exchange therefore proposes to amend Commentary .06 to provide that limit orders priced more than \$0.10 away from the NBBO shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (22). These orders are not currently required to be reported pursuant to Appendix B, and the Exchange and the other Participants believe that requiring the reporting of such orders will produce a more comprehensive data set.

The third change relates to the reporting of market quality statistics pursuant to Appendix B.I for a variety of order types, including inside-the-quote resting limit orders (12), at-the-quote resting limit orders (13), and near-the-quote resting limit orders (within \$0.10 of the NBBO) (14). The Exchange and the other Participants believe that it is appropriate to require Trading Centers to report all orders that fall within these categories, and not just those orders that are “resting.” The Exchange, therefore, proposes to amend Commentary .06 to make this change.

In the fourth change, the Exchange proposes to add new Commentary .09 to modify the manner in which market maker participation statistics are calculated. Currently, Appendix B.IV provides that market maker participation statistics shall be calculated based on share participation, trade participation, cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation, and outside-the-quote share (trade) participation. The Exchange and the other Participants have determined that it is appropriate to add the count of the number of Market Makers used in the calculation of share (trade) participation to each category. The Exchange is, therefore, proposing this change as part of Commentary .09. In addition, Appendix B.IV(b) and (c) currently require that, when aggregating across

Market Makers, share participation and trade participation shall be calculated using the share-weighted average and trade-weighted average, respectively. The Exchange and the other Participants believe that it is more appropriate to calculate share and trade participation by providing the total count of shares or trades, as applicable, rather than weighted averages, and the Exchange is therefore proposing this change as part of Commentary .09.

The fifth change relates to the NBBO that a Trading Center is required to use when performing certain quote-related calculations. When calculating cross-quote share (trade) participation pursuant to Appendix B.IV(d) and inside-the-quote share (trade) participation pursuant to Appendix B.IV(e), the Plan requires the Trading Center to utilize the NBBO at the time of the trade for both share and trade participation calculations. When calculating at-the-quote share (trade) participation and outside-the-quote share (trade) participation pursuant to Appendix B.IV(f) and (g), the Plan allows the Trading Center to utilize the NBBO at the time of or immediately before the trade for both share and trade participation calculations. The Exchange and the other Participants believe that it is appropriate to calculate all quote participation (cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation and outside-the-quote share (trade) participation) solely by reference to the NBBO in effect immediately prior to the trade. The Exchange, therefore, proposes to make this change as part of Commentary .09.

Finally, the Exchange proposes to change the end date until which the Pre-Pilot Data Collection Securities shall be used to fulfill the Plan's data collection requirements. Currently, Commentary .10 provides that Pre-Pilot Data Collection Securities are the

securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C to the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Exchange and the other Participants believe that it is appropriate to use the Pilot Securities to satisfy the Plan's data collection requirements prior to the commencement of the Pilot. Accordingly, the Exchange is revising Commentary .10 (which will be re-numbered as Commentary .11) to provide that the Pre-Pilot Data Collection Securities shall be used to satisfy the Plan's data collection requirements through thirty-one days prior to the Pilot Period, after which time the Pilot Securities shall be used for purposes of the data collection requirements.²¹ As noted in Item 2 of this filing, the Exchange has filed the proposed rule change for immediate effectiveness. The Exchange has requested that the SEC waive the 30-day operative period so that the proposed rule change can become operative on August 30, 2016.

²¹ After regular trading hours on September 2, 2016, the national securities exchanges will establish which securities will be included as Pilot Securities for purposes of the Plan. The Exchange and the other Participants have determined that members should use the Pilot Securities list for data collection purposes once it becomes available. Thus, the proposed rule change requires that, beginning thirty days prior to the first day of the Pilot Period – i.e., September 3, 2016 – The Exchange and Exchange members will comply with the data collection obligations of the Plan by collecting data on the Pilot Securities. As a result, beginning on September 3, 2016, members must migrate from using the Exchange's published Pre-Pilot Data Collection Security list and begin using the Pilot Securities list. September 2, 2016 will be the last day that members use the Pre-Pilot Data Collection Security list.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²² in general, and furthers the objectives of Section 6(b)(5) of the Act,²³ 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, and Section 6(b)(8) of the Act,²⁴ which requires that the Exchange not impose any burden on competition that is not necessary or appropriate.

The Exchange believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan.

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

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78f(b)(8).

Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that, other than the change to require use of the Pilot Securities beginning thirty days prior to the beginning of the Pilot Period, the proposed changes will not affect the data collection and reporting requirements for members that operate Trading Centers; the proposed changes will only affect how the Exchange and Participants that operate Trading Centers collect and report data. The Exchange notes that, with respect to the change to require the use of the Pilot Securities beginning thirty days prior to the start of the Pilot Period, the proposed change reduces the number of securities on which affected members otherwise would have been required to collect data pursuant to the Plan and Rule 3317. In addition, the proposed rule change applies equally to all similarly situated members. Therefore, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 Act²⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁶

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-2016-90 on the subject line.

²⁵ 15 U.S.C. 78s(b)(3)(a)(iii).

²⁶ 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-2016-90. 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-2016-90 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.²⁷

Robert W. Errett
Deputy Secretary

²⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

NASDAQ PHLX Rules

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

(a) No Change

(b) Compliance with Data Collection Requirements

(1) No Change.

(2) The Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Securities and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for:

(A) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through [the trading day immediately preceding]thirty-one days prior to the first day of the Pilot Period; and

(B) Each Pilot Security for the period beginning [on]thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange also shall make such data publicly available on the Exchange web site on a monthly basis at no charge and shall not identify the Member that generated the data.

(3) Daily Market Maker Participation Statistics Requirement

(A) A Member that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan, with respect to activity conducted on any Trading Center in Pre-Pilot Securities and Pilot Securities in furtherance of its status as a Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. Market Makers shall transmit such data in a format required by their DEA by 12:00 p.m. EST on T+4:

(i) For transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through [the trading day immediately preceding]thirty-one days prior to the first day of the Pilot Period; and

(ii) For transactions in each Pilot Security for the period beginning [on]thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period.

(B) – (C) No Change.

(4) Market Maker Profitability

(A) A Member that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions on any Trading Center that have settled or reached settlement date. Market Makers shall transmit such data in a format required by their DEA by 12:00 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each:

(i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through [the trading day immediately preceding]thirty-one days prior to the first day of the Pilot Period; and

(ii) Pilot Security for the period beginning [on]thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period.

(B) No Change.

(5) No Change.

(c) No Change.

Commentary:

.01 – .03 No Change.

.04 (a) For purposes of Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22), the time ranges shall be changed as follows:

([a]1) Appendix B.I.a(14A): The cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt;

([b]2) Appendix B.I.a(15): The cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt;

([c]3) Appendix B.I.a(21A): The cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt; and

([d]4) Appendix B.I.a(22): The cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt.

(b) For purposes of Appendix B.I.a(21) through B.I.a(27), unexecuted Immediate or Cancel orders shall be categorized separately irrespective of the duration of time after order receipt.

.05 No Change.

.06 For purposes of Appendix B, the following order types and numbers shall be included and assigned the following numbers: “not held” orders (18); clean cross orders (19); auction orders (20); and orders that cannot otherwise be classified, including orders received when the NBBO is crossed (21)[.]; and limit order priced more than \$0.10 away from the NBBO (22). For purposes of order types 12-14 in Appendix B, such order types shall include all orders and not solely “resting” orders.

.07 – .08 No Change.

.09 For purposes of Appendix B.IV, the count of the number of Market Makers used in the calculation of share (trade) participation shall be added to each category. For purposes of Appendix B.IV(b) and (c), share participation and trade participation shall be calculated by using a total count instead of a share-weighted average or a trade-weighted average. For purposes of Appendix B, B.IV(d) (cross-quote share (trade) participation), (e) (inside-the-quote share (trade) participation), (f) (at-the-quote share (trade) participation), and (g) (outside-the-quote share (trade) participation), shall be calculated by reference to the National Best Bid or National Best Offer in effect immediately prior to the trade.

.10 For purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily last in, first out (LIFO) basis using reported trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In calculating unrealized trading profits, the Participant also shall report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit), and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.

.11 “Pre-Pilot Data Collection Securities” are the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period [and ending on the trading day immediately

preceding]through thirty-one days prior to the Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of \$5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of \$1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period.

.1[1]2 This Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

* * * * *