

Required fields are shown with yellow backgrounds and asterisks.

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

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

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

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to amend the Exchange transaction fees at Section VIII, to provide an additional credit tier for displayed quotes and orders on NASDAQ PSX in securities that are listed on exchanges other than NASDAQ or NYSE.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Andrew	Last Name * Madar
Title * Senior Associate General Counsel	
E-mail * Andrew.Madar@nasdaq.com	
Telephone * (301) 978-8420	Fax

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 04/03/2017	Executive Vice President and General Counsel
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 *

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

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

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

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

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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 the Exchange’s transaction fees at Section VIII (NASDAQ PSX Fees) to provide an additional credit tier for displayed quotes and orders on NASDAQ PSX (“PSX”) in securities that are listed on exchanges other than The NASDAQ Stock Market, LLC (“Nasdaq”) or NYSE, as described below.

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

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to provide an additional credit tier for displayed quotes and orders on PSX in securities listed on exchanges other than Nasdaq or NYSE ("Tape B securities") that are priced at \$1 and above.³

Currently, the Exchange provides two credits for providing liquidity through PSX. First, the Exchange provides a credit for displayed quotes and orders, with the amount of the credit determined by the member's Consolidated Volume in that month.⁴ Second, the Exchange provides a credit for certain non-displayed orders.⁵

The Exchange now proposes to provide an additional credit tier for displayed quotes and orders in Tape B securities on the Exchange. Specifically, the Exchange will provide a credit of \$0.0027 per share executed for displayed Quotes/Orders entered in securities listed on exchanges other than Nasdaq and NYSE by a member organization that (1) provides a minimum of 1 million shares a day on average in securities listed on

³ Tape C securities are those that are listed on the Exchange, Tape A securities are those that are listed on NYSE, and Tape B securities are those that are listed on exchanges other than Nasdaq or NYSE.

⁴ Specifically, the Exchange provides a credit of \$0.0031 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.35% or more of Consolidated Volume during the month; \$0.0029 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.25% or more of Consolidated Volume during the month; \$0.0027 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.15% or more of Consolidated Volume during the month; \$0.0025 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.05% or more of Consolidated Volume during the month; and \$0.0023 per share executed for all other Quotes/Orders.

⁵ Specifically, the Exchange provides a credit of \$0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity, and \$0.0000 per share executed credit for other non-displayed orders that provide liquidity.

exchanges other than Nasdaq and NYSE and (2) doubles the daily average share volume provided in securities that are listed on exchanges other than Nasdaq or NYSE during the month versus the member organization's daily average share volume provided in securities that are listed on exchanges other than Nasdaq or NYSE in February 2017.⁶

This credit will only apply to securities that are priced at \$1 or above.

The Exchange believes this credit tier will incentivize members to provide increased liquidity in Tape B securities on the Exchange, thereby enhancing the Exchange's market quality in Tape B securities.

⁶ As an example, assume that a member had a daily average share volume of 600,000 shares in Tape B securities in February 2017. If the member provided 1.2 million shares per day on average in Tape B securities in April, the member would receive the rebate for that month, since it had doubled its daily average share volume in Tape B securities in comparison to its February Tape B volume, and also exceeded the one million daily share average volume requirement in Tape B securities in the month of April.

If a member had a daily average share volume of 400,00 shares in Tape B securities in February 2017, the member would have to increase its average daily share volume by 2.5 times in order to meet the requirements of the proposed rebate, since doubling its February average daily volume in Tape B securities would result in an average daily volume of 800,000 shares, which would not satisfy the requirement that the member provide a minimum of 1 million shares a day on average in securities listed on exchanges other than Nasdaq and NYSE.

A member that had a daily average share volume of 900,000 shares in Tape B securities in February 2017 would have to increase its average daily volume in Tape B securities to 1.8 million shares in order to qualify for the credit in a given month, since this would satisfy the requirement that the member double its average daily share volume in Tape B securities in the given month in comparison to its February 2017 volume, in addition to adding at least 1 million shares a day on average in Tape B securities in the month in which eligibility for the credit is being assessed.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁹

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁰ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹¹ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

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

¹⁰ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹¹ See NetCoalition, at 534 - 535.

what cost.”¹²

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹³

The Exchange believes that the additional credit tier is reasonable because it is designed to incentivize members to provide increased liquidity in Tape B securities on the Exchange, thereby enhancing the Exchange’s market quality in Tape B securities. The Exchange believes that the amount of the credit (\$0.0027 per share executed) is proportionate to the requirements necessary to qualify for the credit, and will act as an incentive to add liquidity in Tape B securities. The Exchange notes that the amount of the credit is comparable to other credits offered by the Exchange for adding displayed liquidity, which range from \$0.0023 to \$0.0031 and impose comparable requirements.¹⁴

¹² Id. at 537.

¹³ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹⁴ For example, the Exchange pays a credit of \$0.0027 per share executed for displayed Quotes/Orders that are entered by a member organization that provides and accesses 0.15% or more of Consolidated Volume during the month. While that credit uses percentage of Daily Volume, rather than a daily average share volume measurement, the Exchange believes that the requirements are nonetheless comparable.

The Exchange also notes that Bats BZX Exchange, Inc. pays a credit of \$0.0027 for displayed orders that add liquidity in Tape B securities where the member has an average daily added volume that equals or exceeds 0.08% of Total Consolidated Volume.

The Exchange believes it is reasonable to provide this credit tier to displayed liquidity only, since displayed liquidity plays a significant role in the price formation process, and should thus be incentivized through a credit tier such as is being proposed here. The Exchange believes that it is reasonable to provide this credit tier to Tape B securities that are priced at \$1 or greater, because the Exchange desires to increase its market share in Tape B securities, and because securities priced at less than \$1 are subject to a separate pricing structure.

The Exchange believes that using February 2017 as the basis for determining eligibility for the credit tier is reasonable because that month represents the most recent full month of trading for which the Exchange has completed its assessment of members' activity on the Exchange for purposes of assessing charges and credits, and because the selection of a previous month as a baseline prevents members from changing their behavior prospectively to influence their baseline, and thus, their eligibility for the credit tier. The Exchange also notes that other exchanges use prior months as benchmarks for assessing transaction credits.¹⁵

The Exchange believes that it is reasonable to require a member to both double its daily average share volume in Tape B securities in comparison to its February 2017 volume and also provides a minimum of 1 million shares a day on average in Tape B securities for the month in which eligibility for the credit is being assessed. Requiring that a member double its daily average share volume in Tape B securities in comparison

¹⁵ For example, Bats BZX Exchange, Inc. pays a credit of \$0.0030 per share for adding displayed orders if the member increases its share of total Consolidated Volume for adding liquidity by 0.15% or more in comparison to its volume in April 2016, and if the member has an average daily added volume as a percentage of total Consolidated Volume that equals or exceeds 0.20%.

to its February 2017 volume means that the member is required to add volume in an amount which is meaningful to the member, while requiring that the member provide a daily average share volume of at least of 1 million shares a day in Tape B securities means that the member is required to add volume in an amount which is meaningful to the Exchange.

The Exchange believes that proposed credit tier is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same credit to all similarly situated members. The Exchange notes that participation on the Exchange, and eligibility for the credit tier, is voluntary, and that the proposed credit tier applies equally to all members that qualify for it, e.g., the member doubles its daily average share volume in Tape B securities in comparison to its February 2017 level and provides a minimum of 1 million shares a day on average in Tape B securities for the month in which eligibility for the credit tier is being assessed. This way to receive an ongoing credit is open to any member that elects to meet the volume requirements in Tape B securities.

The Exchange notes that it already offers other credits for adding displayed liquidity that do not require the member to transact in Tape B securities. In adopting this credit tier, the Exchange is providing members with another way in which they may qualify for a credit on the Exchange, while incentivizing members to add increased displayed liquidity in Tape B securities, thereby enhancing the market quality on the Exchange in those securities and benefitting all participants. The Exchange notes that, given the requirement that a member double its daily average share volume in Tape B securities in comparison to its February 2017 level and provide a minimum of 1 million shares a day on average in Tape B securities in the given month, a member may have to

more than double its daily average share volume in Tape B securities in comparison to its February 2017 volume, or provide more than 1 million shares a day on average in Tape B securities in the given month, in order to be eligible for the credit tier. The Exchange believes that this is not equitable and not unfairly discriminatory because the requirements to qualify for the credit tier apply to all members, and because imposing both elements requires a member to add volume in an amount which is meaningful to the member (by doubling its February 2017 average daily volume in Tape B securities) and to the Exchange (providing a daily average share volume of at least of 1 million shares a day in Tape B securities).

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable.

In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee and credit changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed credit tier does not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The new credit tier is consistent with transaction credits currently assessed by the Exchange and by other exchanges. The new credit tier applies equally to all members that meet the volume requirements, and all similarly situated members are equally capable of qualifying for the credit if they choose to meet the volume requirements. Finally, the purpose of the credit is to incentivize members to add displayed liquidity to the Exchange in Tape B securities. The Exchange believes this will create greater liquidity in those securities on the Exchange, which will potentially attract additional participants to the Exchange and thereby promote competition.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁶ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2017-28)

April __, 2017

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

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 April 3, 2017, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Section VIII (NASDAQ PSX Fees) to provide an additional credit tier for displayed quotes and orders on NASDAQ PSX ("PSX") in securities that are listed on exchanges other than The NASDAQ Stock Market, LLC ("Nasdaq") or NYSE.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The purpose of the proposed rule change is to provide an additional credit tier for displayed quotes and orders on PSX in securities listed on exchanges other than Nasdaq or NYSE ("Tape B securities") that are priced at \$1 and above.³

Currently, the Exchange provides two credits for providing liquidity through PSX. First, the Exchange provides a credit for displayed quotes and orders, with the amount of

³ Tape C securities are those that are listed on the Exchange, Tape A securities are those that are listed on NYSE, and Tape B securities are those that are listed on exchanges other than Nasdaq or NYSE.

the credit determined by the member's Consolidated Volume in that month.⁴ Second, the Exchange provides a credit for certain non-displayed orders.⁵

The Exchange now proposes to provide an additional credit tier for displayed quotes and orders in Tape B securities on the Exchange. Specifically, the Exchange will provide a credit of \$0.0027 per share executed for displayed Quotes/Orders entered in securities listed on exchanges other than Nasdaq and NYSE by a member organization that (1) provides a minimum of 1 million shares a day on average in securities listed on exchanges other than Nasdaq and NYSE and (2) doubles the daily average share volume provided in securities that are listed on exchanges other than Nasdaq or NYSE during the month versus the member organization's daily average share volume provided in securities that are listed on exchanges other than Nasdaq or NYSE in February 2017.⁶ This credit will only apply to securities that are priced at \$1 or above.

⁴ Specifically, the Exchange provides a credit of \$0.0031 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.35% or more of Consolidated Volume during the month; \$0.0029 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.25% or more of Consolidated Volume during the month; \$0.0027 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.15% or more of Consolidated Volume during the month; \$0.0025 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.05% or more of Consolidated Volume during the month; and \$0.0023 per share executed for all other Quotes/Orders.

⁵ Specifically, the Exchange provides a credit of \$0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity, and \$0.0000 per share executed credit for other non-displayed orders that provide liquidity.

⁶ As an example, assume that a member had a daily average share volume of 600,000 shares in Tape B securities in February 2017. If the member provided 1.2 million shares per day on average in Tape B securities in April, the member would receive the rebate for that month, since it had doubled its daily average share volume in Tape B securities in comparison to its February Tape B volume, and also exceeded the one million daily share average volume requirement in Tape B securities in the month of April.

The Exchange believes this credit tier will incentivize members to provide increased liquidity in Tape B securities on the Exchange, thereby enhancing the Exchange's market quality in Tape B securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the

If a member had a daily average share volume of 400,000 shares in Tape B securities in February 2017, the member would have to increase its average daily share volume by 2.5 times in order to meet the requirements of the proposed rebate, since doubling its February average daily volume in Tape B securities would result in an average daily volume of 800,000 shares, which would not satisfy the requirement that the member provide a minimum of 1 million shares a day on average in securities listed on exchanges other than Nasdaq and NYSE.

A member that had a daily average share volume of 900,000 shares in Tape B securities in February 2017 would have to increase its average daily volume in Tape B securities to 1.8 million shares in order to qualify for the credit in a given month, since this would satisfy the requirement that the member double its average daily share volume in Tape B securities in the given month in comparison to its February 2017 volume, in addition to adding at least 1 million shares a day on average in Tape B securities in the month in which eligibility for the credit is being assessed.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁹

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁰ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹¹ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹²

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”¹³

The Exchange believes that the additional credit tier is reasonable because it is designed to incentivize members to provide increased liquidity in Tape B securities on the Exchange, thereby enhancing the Exchange’s market quality in Tape B securities.

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

¹⁰ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹¹ See NetCoalition, at 534 - 535.

¹² Id. at 537.

¹³ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

The Exchange believes that the amount of the credit (\$0.0027 per share executed) is proportionate to the requirements necessary to qualify for the credit, and will act as an incentive to add liquidity in Tape B securities. The Exchange notes that the amount of the credit is comparable to other credits offered by the Exchange for adding displayed liquidity, which range from \$0.0023 to \$0.0031 and impose comparable requirements.¹⁴

The Exchange believes it is reasonable to provide this credit tier to displayed liquidity only, since displayed liquidity plays a significant role in the price formation process, and should thus be incentivized through a credit tier such as is being proposed here. The Exchange believes that it is reasonable to provide this credit tier to Tape B securities that are priced at \$1 or greater, because the Exchange desires to increase its market share in Tape B securities, and because securities priced at less than \$1 are subject to a separate pricing structure.

The Exchange believes that using February 2017 as the basis for determining eligibility for the credit tier is reasonable because that month represents the most recent full month of trading for which the Exchange has completed its assessment of members' activity on the Exchange for purposes of assessing charges and credits, and because the selection of a previous month as a baseline prevents members from changing their behavior prospectively to influence their baseline, and thus, their eligibility for the credit

¹⁴ For example, the Exchange pays a credit of \$0.0027 per share executed for displayed Quotes/Orders that are entered by a member organization that provides and accesses 0.15% or more of Consolidated Volume during the month. While that credit uses percentage of Daily Volume, rather than a daily average share volume measurement, the Exchange believes that the requirements are nonetheless comparable.

The Exchange also notes that Bats BZX Exchange, Inc. pays a credit of \$0.0027 for displayed orders that add liquidity in Tape B securities where the member has an average daily added volume that equals or exceeds 0.08% of Total Consolidated Volume.

tier. The Exchange also notes that other exchanges use prior months as benchmarks for assessing transaction credits.¹⁵

The Exchange believes that it is reasonable to require a member to both double its daily average share volume in Tape B securities in comparison to its February 2017 volume and also provides a minimum of 1 million shares a day on average in Tape B securities for the month in which eligibility for the credit is being assessed. Requiring that a member double its daily average share volume in Tape B securities in comparison to its February 2017 volume means that the member is required to add volume in an amount which is meaningful to the member, while requiring that the member provide a daily average share volume of at least of 1 million shares a day in Tape B securities means that the member is required to add volume in an amount which is meaningful to the Exchange.

The Exchange believes that proposed credit tier is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same credit to all similarly situated members. The Exchange notes that participation on the Exchange, and eligibility for the credit tier, is voluntary, and that the proposed credit tier applies equally to all members that qualify for it, e.g., the member doubles its daily average share volume in Tape B securities in comparison to its February 2017 level and provides a minimum of 1 million shares a day on average in Tape B securities for the month in which eligibility

¹⁵ For example, Bats BZX Exchange, Inc. pays a credit of \$0.0030 per share for adding displayed orders if the member increases its share of total Consolidated Volume for adding liquidity by 0.15% or more in comparison to its volume in April 2016, and if the member has an average daily added volume as a percentage of total Consolidated Volume that equals or exceeds 0.20%.

for the credit tier is being assessed. This way to receive an ongoing credit is open to any member that elects to meet the volume requirements in Tape B securities.

The Exchange notes that it already offers other credits for adding displayed liquidity that do not require the member to transact in Tape B securities. In adopting this credit tier, the Exchange is providing members with another way in which they may qualify for a credit on the Exchange, while incentivizing members to add increased displayed liquidity in Tape B securities, thereby enhancing the market quality on the Exchange in those securities and benefitting all participants. The Exchange notes that, given the requirement that a member double its daily average share volume in Tape B securities in comparison to its February 2017 level and provide a minimum of 1 million shares a day on average in Tape B securities in the given month, a member may have to more than double its daily average share volume in Tape B securities in comparison to its February 2017 volume, or provide more than 1 million shares a day on average in Tape B securities in the given month, in order to be eligible for the credit tier. The Exchange believes that this is not equitable and not unfairly discriminatory because the requirements to qualify for the credit tier apply to all members, and because imposing both elements requires a member to add volume in an amount which is meaningful to the member (by doubling its February 2017 average daily volume in Tape B securities) and to the Exchange (providing a daily average share volume of at least of 1 million shares a day in Tape B securities).

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly

competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable.

In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee and credit changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed credit tier does not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The new credit tier is consistent with transaction credits currently assessed by the Exchange and by other exchanges. The new credit tier applies equally to all members that meet the volume requirements, and all similarly situated members are equally capable of qualifying for the credit if they choose to meet the volume requirements. Finally, the purpose of the credit is to incentivize members to add displayed liquidity to the Exchange in Tape B securities. The Exchange believes this will create greater liquidity in those securities on the Exchange, which will potentially attract additional participants to the Exchange and thereby promote competition.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange

does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁶

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

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2017-28 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2017-28. 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-2017-28 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.¹⁷

Robert W. Errett
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

NASDAQ PHLX Rules

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NASDAQ PHLX LLC Pricing Schedule

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VIII. NASDAQ PSX Fees

Port Fees[†] No Change.

Order Execution and Routing

(a) The following charges and credits shall apply to the use of the order execution and routing services of the NASDAQ PSX System by member organizations for all securities that it trades priced at \$1 or more per share:

(1) Fees for Execution of Quotes/Orders in Nasdaq-Listed Securities, Securities Listed on the New York Stock Exchange (“NYSE”) and Securities Listed on Exchanges other than Nasdaq and NYSE. As used in this rule, the term “Consolidated Volume” shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

Charge to member organization entering order that executes in NASDAQ PSX:	\$0.0029 per share executed in Nasdaq-Listed Securities entered by a member organization that accesses 0.065% or more of Consolidated Volume during the month
	\$0.0028 per share executed in NYSE-Listed Securities entered by a member organization that accesses 0.065% or more of Consolidated Volume during the month
	\$0.0028 per share executed in Securities Listed on Exchanges other than Nasdaq and NYSE entered by a member organization that accesses 0.065% or more of Consolidated Volume during the month

\$0.0030 per share executed for all other member organizations

Credit to member organization providing liquidity through the NASDAQ PSX System:

Displayed Quote/Order: \$0.0031 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.35% or more of Consolidated Volume during the month

\$0.0029 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.25% or more of Consolidated Volume during the month

\$0.0027 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.15% or more of Consolidated Volume during the month

\$0.0027 per share executed for Quotes/Orders entered in Securities Listed on Exchanges other than Nasdaq and NYSE by a member organization that (1) provides a minimum of 1 million shares a day on average in Securities Listed on Exchanges other than Nasdaq and NYSE and (2) doubles the daily average share volume provided in securities that are Listed on Exchanges other than Nasdaq or NYSE during the month versus the member organization's daily average share volume provided in securities that are Listed on Exchanges other than Nasdaq or NYSE in February 2017

\$0.0025 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.05% or more of Consolidated Volume during the month

\$0.0023 per share executed for all other Quotes/Orders

Non-Displayed Order Charges and Credits:

\$0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity

\$0.0000 per share executed credit for other non-displayed orders that provide liquidity

(2) Fees for Routing of Orders in All Securities

Charge to member organization entering PSTG or PSCN order that executes in a venue other than the NASDAQ PSX System:	\$0.0030 per share executed at NYSE
	\$0.0000 per share executed at NASDAQ BX
	\$0.0030 per share executed in other venues
Charge to member organization entering PMOP order that executes in a venue other than the NASDAQ PSX System:	\$0.0035 per share executed at NYSE
	\$0.0035 per share executed at venues other than NYSE
Charge to member organization entering PTFY order that executes in a venue other than the NASDAQ PSX System:	\$0.0030 per share executed at NYSE
	\$0.0007 per share executed at venues other than NYSE, NASDAQ or NASDAQ BX
	\$0.0030 per share executed at NASDAQ
	\$0.0000 per share executed at NASDAQ BX
Charge to member organization entering PCRT order that executes in a venue other than the NASDAQ PSX System:	\$0.0030 per share executed at NASDAQ
	\$0.0000 per share executed at NASDAQ BX
Charge to member organization entering XDRK order that executes in a venue other than the NASDAQ PSX System:	\$0.0007 per share executed
Charge to member	\$0.0000 per share executed at NASDAQ BX

organization entering
XCST order that \$0.0007 per share for shares executed at a venue other than
executes in a venue NASDAQ BX
other than the
NASDAQ PSX
System:

(b) The following charges and credits shall apply to the use of the order execution and routing services of the NASDAQ PSX System by member organizations for all securities that it trades priced at less than \$1 per share:

Charge to member 0.20% of the total transaction cost
organization entering
order that executes in
NASDAQ PSX:

Credit to member \$0
organization
providing
liquidity through the
NASDAQ PSX
System:

Charge to member 0.3% of the total transaction cost
organization entering
order that executes in
a venue other than
the NASDAQ PSX
System:

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