

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="77"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2017"/> - * <input type="text" value="43"/> Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by **NASDAQ PHLX LLC**
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 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 the Rule 3400 series relating to the Order Audit Trail System, Rule 785 relating to Electronic Blue Sheets, Rule 1022 relating to account identification, and Rule 1063 and Option Floor Procedure Advices and Order and Decorum Regulations C-2 relating to the Consolidated Options Audit Trail System.

Contact Information

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

First Name * Last Name *

Title *

E-mail *

Telephone * Fax

Signature

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

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

(Title *)

Date

By

(Name *)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) 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 Rule 3400 series relating to the Order Audit Trail System, Rule 785 relating to Electronic Blue Sheets, Rule 1022 relating to account identification, and Rule 1063 and Option Floor Procedure Advices and Order and Decorum Regulations C-2 relating to the Consolidated Options Audit Trail System to reflect changes to these rules once members are effectively reporting to the Consolidated Audit Trail (“CAT”) and the CAT’s accuracy and reliability meets certain standards as described below.

A notice of the proposed rule change for publication in the Federal Register is attached hereto 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 has not yet been approved by the Board of Directors of the Exchange. Once it has obtained Board approval, the Exchange plans to file a technical amendment to this proposed rule change to reflect that approval. Once Board approval is obtained, no further action by the Exchange in connection with this proposed rule change will be required.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

a. Purpose

The Exchange proposes to amend the Rule 3400 series relating to the Order Audit Trail System ("OATS"), Rule 785 relating to Electronic Blue Sheets ("EBS"), Rule 1022 relating to account identification, and Rule 1063 Option Floor Procedure Advices and Order and Decorum Regulations C-2 relating to the Consolidated Options Audit Trail System ("COATS") to reflect changes to these rules once members are effectively reporting to the CAT, and the CAT's accuracy and reliability meets certain standards as described below.³

Background

Bats BYX Exchange, Inc.; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; FINRA; International Securities Exchange, LLC; Investors' Exchange LLC; ISE Gemini, LLC; ISE Mercury, LLC; Miami International Securities Exchange LLC; MIAX PEARL, LLC; NASDAQ BX, Inc.; NASDAQ PHLX LLC; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc. (collectively, the "Participants") filed with the Commission,

³ The Exchange initially filed the proposed rule change on May 15, 2017 (SR-Phlx-2017-38). On May 26, 2017, the Exchange withdrew that filing and submitted this filing.

pursuant to Section 11A of the Exchange Act⁴ and Rule 608 of Regulation NMS thereunder,⁵ the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”).⁶ The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.⁷ The Plan was published for comment in the Federal Register on May 17, 2016,⁸ and approved by the Commission, as modified, on November 15, 2016.⁹ On March 15, 2017, the Commission approved the new Phlx Rule 900A Series to implement provisions of the CAT NMS Plan that are applicable to Phlx members.¹⁰

The CAT NMS Plan is designed to create, implement, and maintain a consolidated audit trail that will capture in a single consolidated data source customer and

⁴ 15 U.S.C. 78k-1.

⁵ 17 CFR 242.608.

⁶ See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017).

National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Release No. 79902 (Jan. 30, 2017), 82 FR 9258 (February 3, 2017).

⁷ 17 CFR 242.613.

⁸ Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

⁹ Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“Approval Order”).

¹⁰ See Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR-Phlx-2017-07).

order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution. Among other things, Section C.9. of Appendix C to the Plan, as modified by the Commission, requires each Participant to “file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC’s approval of the CAT NMS Plan.”¹¹ The Plan notes that “the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.”¹² Finally, the Plan requires the rule filing to discuss the following:

(i) specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired;

(ii) whether the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems; and

(iii) whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.¹³

¹¹ CAT NMS Plan, Appendix C, Section C.9.

¹² See id.

¹³ See id.

Changes to OATS

In response to these requirements, Phlx is proposing to delete the Rule 3400 Series (the “OATS Rules”) from the Phlx rulebook once the CAT achieves the specific accuracy and reliability standards described below, and Phlx has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations,¹⁴ and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.¹⁵

Specific Accuracy and Reliability Standards

The first issue the Plan requires the proposed rule change to discuss is “specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.”¹⁶ Phlx believes

¹⁴ As noted in the Participants’ September 23, 2016 response to comment letters on the Plan, the Participants “worked to keep [the CAT] gap analyses up-to-date by including newly-added data fields in these duplicative systems, such as the new OATS data fields related to the tick size pilot and ATS order book changes, in the gap analyses.” See Letter from Participants to Brent J. Fields, Secretary, Commission, dated September 23, 2016, at 21. The Participants noted that they “will work with the Plan Processor and the industry to develop detailed Technical Specifications to ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.” Id.

¹⁵ Phlx notes that the OATS Rules were originally proposed to fulfill one of the undertakings contained in an order issued by the Commission relating to the settlement of an enforcement action against the National Association of Securities Dealers, Inc. for failure to adequately enforce its rules. See Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998). In approving the OATS Rules, the Commission concluded that OATS satisfied the conditions of the SEC’s order and was consistent with the Exchange Act. See id. at 12566-67.

¹⁶ See id.

that relevant error rates are the primary, but not the sole, metric by which to determine the CAT's accuracy and reliability and will serve as the baseline requirement needed before OATS can be retired and requests for trading information can be amended to account for information being available in the CAT.

As discussed in Section A.3.(b) of Appendix C to the CAT NMS Plan, the Participants established an initial Error Rate, as defined in the Plan, of 5% on initially submitted data (i.e., data as submitted by a CAT Reporter before any required corrections are performed). The Participants noted in the Plan that their expectation was that "error rates after reprocessing of error corrections will be de minimis."¹⁷ The Participants based this Error Rate on their consideration of "current and historical OATS Error Rates, the magnitude of new reporting requirements on the CAT Reporters and the fact that many CAT Reporters may have never been obligated to report data to an audit trail."¹⁸

Phlx agrees with the Participants' conclusion that a 5% pre-correction threshold "strikes the balance of adapting to a new reporting regime, while ensuring that the data provided to regulators will be capable of being used to conduct surveillance and market reconstruction, as well as having a sufficient level of accuracy to facilitate the retirement of existing regulatory reports and systems where possible."¹⁹ However, Phlx believes that, when assessing the accuracy and reliability of the data for the purposes of retiring OATS, the error thresholds should be measured in more granular ways and should also include minimum error rates of post-correction data, which represents the data most likely to be used by Phlx to conduct surveillance. Although Phlx is proposing to measure

¹⁷ See CAT NMS Plan, Appendix C, Section A.3(b), at n.102.

¹⁸ Id.

¹⁹ Id.

the appropriate error rates in the aggregate, rather than firm-by-firm, Phlx believes that the error rates for equity securities should be measured separately from options since options orders are not currently reported regularly or included in OATS.

To ensure the CAT's accuracy and reliability, Phlx is proposing that, before OATS could be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting in each of the categories below for a period of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis and 2% or lower on a post-correction basis (measured at T+5).²⁰ Phlx is proposing to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. Phlx believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds for Industry Member reporting while also ensuring that single-day measurements do not unduly affect the overall measurements.

Phlx is proposing to use error rates in each the following categories, measured separately for options and for equities, to assess whether the threshold pre- and post-correction error rates are being met:

- Rejection Rates and Data Validations. Data validations for the CAT, while not expected to be designed the same as OATS, must be functionally equivalent to OATS in accordance with the CAT NMS Plan (i.e., the same types of basic data validations must be performed by the Plan Processor to comply with the CAT

²⁰ The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. See CAT NMS Plan, Appendix C, Section A.2(a).

NMS Plan requirements). Appendix D of the Plan, for example, requires that certain file validations²¹ and syntax and context checks be performed on all submitted records.²² If a record does not pass these basic data validations, it must be rejected and returned to the CAT Reporter to be corrected and resubmitted.²³ The specific validations can be determined only after the Plan Processor has finalized the Industry Member Technical Specifications; however, the Plan also requires the Plan Processor to provide daily statistics on rejection rates after the data has been processed, including the number of files rejected and accepted, the number of order events accepted and rejected, and the number of each type of report rejected.²⁴ Phlx is proposing that, over the 180-day period, aggregate rejection rates (measured separately for equities and options) must be no more than 5% pre-correction or 2% post-correction across all CAT Reporters.

- Intra-Firm Linkages. The Plan requires that “the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an

²¹ See CAT NMS Plan, Appendix D, Section 7.2. The Plan requires the Plan Processor to confirm that file transmission and receipt are in the correct formats, including validation of header and trailers on the submitted report, confirmation of a valid Exchange-Assigned Market Participant Identifier, and verification of the number of records in the file. Id.

²² See id. The Plan notes that syntax and context checks would include format checks (i.e., that data is entered in the specified format); data type checks (i.e., that the data type of each attribute conforms to the specifications); consistency checks (i.e., that all attributes for a record of a specified type are consistent); range/logic checks (i.e., that each attribute for every record has a value within specified limits and the values provided are associated with the event type they represent); data validity checks (i.e., that each attribute for every record has an acceptable value); completeness checks (i.e., that each mandatory attribute for every record is not null); and timeliness checks (i.e., that the records were submitted within the submission timelines). Id.

²³ See id.

²⁴ See id.

order.”²⁵ At a minimum, this requirement includes the creation of an order lifecycle between “[a]ll order events handled within an individual CAT Reporter, including orders routed to internal desks or departments with different functions (e.g., an internal ATS).”²⁶ Phlx is proposing that aggregate intra-firm linkage rates across all Industry Member Reporters must be at least 95% pre-correction and 98% post-correction.

- Inter-Firm Linkages. The order linkage requirements in the Plan also require that the Plan Processor be able to create the lifecycle between orders routed between broker-dealers.²⁷ Phlx is proposing that at least a 95% pre-correction and 98% post-correction aggregate match rate be achieved for orders routed between two Industry Member Reporters.²⁸
- Order Linkage Rates. In addition to creating linkages within and between broker-dealers, the Plan also includes requirements that the Plan Processor be able to create lifecycles to link various pieces of related orders.²⁹ For example, the Plan requires linkages between customer orders and “representative” orders created in firm accounts for the purpose of facilitating a customer order, various legs of option/equity complex orders, riskless principal orders, and orders worked through average price accounts.³⁰ Phlx is proposing that there be at least a 95%

²⁵ CAT NMS Plan, Appendix D, Section 3.

²⁶ Id.

²⁷ Id.

²⁸ This assumes linkage statistics will include both unlinked route reports and new orders where no related route report could be found.

²⁹ See CAT NMS Plan, Appendix D, Section 3.

³⁰ See id.

- pre-correction and 98% post-correction linkage rate for multi-legged orders (e.g., related equity/options orders, VWAP orders, riskless principal transactions).
- Exchange and TRF/ORF Match Rates. The Plan requires that an order lifecycle be created to link “[o]rders routed from broker-dealers to exchanges” and “[e]xecuted orders and trade reports.”³¹ Phlx is proposing at least a 95% pre-correction and 98% post-correction aggregate match rate to each equity exchange for orders routed from Industry Members to an exchange and, for over-the-counter executions, the same match rate for orders linked to trade reports.

In addition to these minimum error rates and matching thresholds that generally must be met before OATS can be retired, Phlx believes that during the minimum 180-day period during which the thresholds are calculated, Phlx’s use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. Phlx believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

Small Industry Member Data Availability

The second issue the Plan requires the proposed rule change to address is “whether the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.”

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Id.

Phlx believes that there is no effective way to retire OATS until all current OATS reporters are reporting to the CAT. Although Technical Specifications for Industry Members are not yet available, PHLX believes it would be inefficient, less reliable, and more costly to attempt to marry the OATS and CAT databases for a temporary period to allow some Phlx members to report to CAT while others continue to report to OATS. Consequently, Phlx has concluded at this time that having data from those Small Industry Members currently reporting to OATS available two years after the Effective Date would substantially facilitate a more expeditious retirement of OATS. For this reason, Phlx supports an amendment to the Plan that would require current OATS Reporters that are “Small Industry Members” to report two years after the Effective Date (instead of three). Phlx intends to work with the other Participants to submit a proposed amendment to the Plan to require Small Industry Members that are OATS Reporters to report two years after the Effective Date.

Phlx has identified approximately 300 member firms that currently report to OATS and meet the definition of “Small Industry Member;” however, only ten of these firms submit information to OATS on their own behalf, and eight of the ten firms report very few orders to OATS.³² The vast majority of these 300 firms use third parties to fulfill their reporting obligations, and many of these third parties will begin reporting to CAT in November 2018. Consequently, Phlx believes that the burden on current OATS Reporters that are “Small Industry Members” would not be significant if those firms are required to report to CAT beginning in November 2018 rather than November 2019. The burdens, however, are significantly greater for those firms that are not reporting to OATS

³² For example, in one recent month, eight of the ten firms submitted fewer than 100 reports during the month, with four firms submitting fewer than 50.

currently; therefore, Phlx does not believe it would be necessary or appropriate to accelerate CAT reporting for “Small Industry Members” that are not currently reporting to OATS, and PHLX would not support an amendment to the Plan to accelerate CAT reporting for “Small Industry Members” that are not currently OATS Reporters.

Individual Industry Member Exemptions

The final issue the Plan requires the proposed rule change to address is “whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.”

As described above, Phlx believes that a single cut-over from OATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the OATS requirements on a firm-by-firm basis. The primary benefit to a firm-by-firm exemptive approach would be to reduce the amount of time an individual firm is required to report to a legacy system (e.g., OATS) if it is also accurately and reliably reporting to the CAT. Phlx believes that the overall accuracy and reliability thresholds for the CAT described above would need to be met under any conditions before firms could stop reporting to OATS. Moreover, as discussed above, Phlx supports amending the Plan to accelerate the reporting requirements for Small Industry Members that are OATS Reporters to report on the same timeframe as all other OATS Reporters. If such an amendment were approved by the Commission, there would be no need to exempt members from OATS requirements on a firm-by-firm basis.

Changes to EBS and Account Identification Rules

Rule 785 is Phlx's rule regarding the automated submission of specific trading data to Phlx upon request using the Electronic Blue Sheet ("EBS") system. Rule 785 requires members to submit certain trade information as prescribed by the Exchange, including, for proprietary transactions, the clearing house number or alpha symbol of the member submitting the data, the identifying symbol assigned to the security, and the date the transaction was executed.

Rule 1022 imposes certain account identification requirements on Specialists and Registered Options Traders. Specifically, Rule 1022 requires those market participants to file with the Exchange upon request and keep current a list identifying all accounts for stock, Exchange-Traded Fund Shares, option and related securities or foreign currencies, physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity and other related trading in which the Specialist or Registered Options Trader may, directly or indirectly, engage in trading activities or over which they exercise investment discretion. That Rule prohibits a Specialist or Registered Options Trader from engaging in trading in any of these instruments in an account that has not been reported to the Exchange pursuant to this rule.

Once broker-dealer reporting to the CAT has begun, the CAT will contain the data the Participants would otherwise have requested via the EBS system for purposes of NMS Securities and OTC Equity Securities. Consequently, Phlx will not need to use the EBS system or request information pursuant to these rules for NMS Securities or OTC Equity Securities for time periods after CAT reporting has begun if the appropriate

accuracy and reliability thresholds are achieved, including an acceptable accuracy rate for customer and account information. However, these rules cannot be completely eliminated immediately upon the CAT achieving the appropriate thresholds because Exchange staff may still need to request information pursuant to these rules for trading activity occurring before a member was reporting to the CAT.³³ In addition, these rules apply to information regarding transactions involving securities that will not be reportable to the CAT, such as fixed-income securities; thus, these rules must remain in effect with respect to those transactions indefinitely or until those transactions are captured in the CAT.

The proposed rule change proposes to add new Supplementary Material to Rule 785 and Rule 1022 to clarify how Phlx will request data under these rules after members are reporting to the CAT. Specifically, the proposed Supplementary Material to these rules will note that the Exchange will request information under these rules only if the information is not available in the CAT because, for example, the transactions in question occurred before the firm was reporting information to the CAT or involved securities that are not reportable to the CAT. In essence, under the new Supplementary Material, the Exchange will make requests under these rules if and only if the information is not otherwise available through the CAT.

The CAT NMS Plan states, however, that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and

³³ Firms are required to maintain the trade information for pre-CAT transactions in equities and options pursuant to applicable rules, such as books and records retention requirements, for the relevant time period, which is generally three or six years depending upon the record. See 17 CFR 240.17a-3(a), 240.17a-4.

reliability.³⁴ Accordingly, as discussed in more detail below, Phlx believes that the EBS data may be replaced by CAT Data at a date after all Industry Members are reporting to the CAT when the proposed error rate thresholds have been met, and Phlx has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

Phlx believes CAT Data should not be used in place of EBS data until all Participants and Industry Members are reporting data to CAT. In this way, Phlx will continue to have access to the necessary data to perform its regulatory duties.

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether “the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.”³⁵ Phlx believes that the submission of data to the CAT by Small Industry Members a year earlier than is required in the CAT NMS Plan, at the same time as the other Industry Members, would expedite the replacement of EBS data with CAT Data, as Phlx believes that the CAT would then have all necessary data from the Industry Members for Phlx to perform the regulatory surveillance that currently is performed via EBS. For this reason, Phlx supports amending the CAT NMS Plan to require Small Industry Members to report data to the CAT two years after the Effective Date (instead of three), and intends to work with other Participants toward that end.

³⁴ Id.

³⁵ Id.

The CAT NMS Plan requires that this rule filing address “whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.”³⁶ Phlx believes that a single cut-over from EBS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the EBS requirements on a firm-by-firm basis. Phlx believes that providing such individual exemptions to Industry Members would be inefficient, more costly, and less reliable than the single cut-over. Providing individual exemptions would require the exchanges to create, for a brief temporary period, a cross-system regulatory function and to integrate data from EBS and the CAT to avoid creating any regulatory gaps as a result of such exemptions. Such a function would be costly to create and would give rise to a greater likelihood of data errors or other issues. Given the limited time in which such exemptions would be necessary, Phlx does not believe that such exemptions would be an appropriate use of limited resources. Moreover, the primary benefit to a firm-by-firm exemptive approach would be to reduce the amount of time an individual firm is required to comply with EBS if it is also accurately and reliably reporting to the CAT. Phlx believes that the overall accuracy and reliability thresholds for the CAT described above would need to be met under any conditions before firms could stop reporting to EBS, and as discussed above, by accelerating Small Industry Members to report on the same

³⁶Id.

timeframe as all other Industry Members, there is no need to exempt members from EBS requirements on a firm-by-firm basis.

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide “specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.”³⁷ Phlx believes that it is critical that the CAT Data be sufficiently accurate and reliable for Phlx to perform the regulatory functions that it now performs via EBS. Accordingly, Phlx believes that the CAT Data should meet specific quantitative error rates, as well as certain qualitative requirements.

Phlx believes that, before CAT Data may be used in place of EBS data, the CAT would need to achieve a sustained error rate for a period of at least 180 days of 5% or lower measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).³⁸ Phlx proposes to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. Phlx believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds while also ensuring that single-day measurements do not unduly affect the overall measurements. Phlx proposes to measure the appropriate error rates in the

³⁷ Id.

³⁸ The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. See CAT NMS Plan, at C-15.

aggregate, rather than firm-by-firm. The 2% and 5% error rates are in line with the proposed retirement threshold for other systems, such as OATS and COATS.

In addition to these minimum error rates before using CAT Data instead of EBS data, Phlx believes that during the minimum 180-day period during which the thresholds are calculated, Phlx's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. Phlx believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

Changes to COATS

The options exchanges utilize COATS to collect and review data regarding options orders, quotes and transactions. The Participants have provided COATS technical specifications to the Plan Processor for the CAT for use in developing the Technical Specifications for the CAT, and the Participants are working with the Plan Processor to include the necessary COATS data elements in the CAT Technical Specifications. Accordingly, although the Technical Specifications for the CAT have not yet been finalized, Phlx and the other options exchanges propose to eliminate COATS in accordance with the proposed timeline discussed below.

Phlx adopted Rule 1063 to implement certain reporting requirements related to COATS, and therefore proposes to eliminate the information reporting requirements of

that rule and replacing those requirements with a requirement that members report information pursuant to this rule as required by Phlx's CAT Compliance Rule, Rule 900A.³⁹ Phlx also proposes to make a corresponding change to Option Floor Procedure Advices and Order and Decorum Regulations C-2.

Rule 1063(e) describes the operations and requirements of the Floor Broker Management System, which is designed to create an electronic audit trail for equity, equity index and U.S. dollar-settled foreign currency options orders represented by Floor Brokers on the Exchange's Options Floor. Among other things, Rule 1063(e) requires a Floor Broker or that Floor Broker's employees, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, to record order information including (i) the order type (i.e., customer, firm, broker-dealer, professional) and order receipt time; (ii) the option symbol; (iii) buy, sell, cross or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order; and (v) number of contracts.

³⁹ COATS was developed to comply with an order of the Commission requiring the then-options exchanges to "design and implement" a consolidated audit trail to "enable the options exchanges to reconstruct markets promptly, effectively surveil them and enforce order handling, firm quote, trade reporting and other rules." See Section IV.B.e.(v) of the Commission's Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions (the "Order"). See Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File No. 3-10282. As noted, the Plan is designed to create, implement and maintain a CAT that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. Phlx has already adopted rules to enforce compliance by its Industry Members, as applicable, with the provisions of the Plan. Once the CAT is fully operational, it will be appropriate to delete Phlx's rules implemented to comply with the Order as duplicative of the CAT. Accordingly, Phlx believes that it would continue to be in compliance with the requirements of the Order once the CAT is fully operational and the COATS rules are deleted.

Option Floor Procedure Advices and Order and Decorum Regulations C-2 repeats these requirements, and imposes a schedule of fines for violating these requirements.

The CAT NMS Plan states that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.⁴⁰ As discussed in more detail below, Phlx and the other options exchanges believe that COATS may be retired at a date after all Industry Members are reporting to the CAT when the proposed error rate thresholds have been met, and Phlx has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

Phlx believes COATS should not be retired until all Participants and Industry Members that report data to COATS are reporting comparable data to the CAT. In this way, Phlx will continue to have access to the necessary data to perform its regulatory duties.

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether “the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.”⁴¹ The Exchange believes COATS should not be retired until all Participants and Industry Members that report data to COATS are reporting comparable data to the CAT. While the early submission of options data to the CAT by Small Industry

⁴⁰ Id.

⁴¹ Id.

Members could expedite the retirement of COATS, the Exchange believes that it premature to consider such a change and that additional analysis would be necessary to determine whether such early reporting by Small Industry Members would be feasible.

The CAT NMS Plan requires that this rule filing address “whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.”⁴² Phlx believes that a single cut-over from COATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the COATS requirements on a firm-by-firm basis. Phlx and the other options exchanges believe that providing such individual exemptions to Industry Members would be inefficient, more costly, and less reliable than the single cut-over. Providing individual exemptions would require the options exchanges to create, for a brief temporary period, a cross-system regulatory function and to integrate data from COATS and the CAT to avoid creating any regulatory gaps as a result of such exemptions. Such a function would be costly to create and would give rise to a greater likelihood of data errors or other issues. Given the limited time in which such exemptions would be necessary, Phlx and the other options exchanges do not believe that such exemptions would be an appropriate use of limited resources.

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide “specific accuracy and reliability standards that will determine when

⁴² Id.

duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.”⁴³ Phlx believes that it is critical that the CAT Data be sufficiently accurate and reliable for the Exchange to perform the regulatory functions that it now performs via COATS. Accordingly, Phlx believes that the CAT Data should meet specific quantitative error rates, as well as certain qualitative requirements.

Phlx and the other options exchanges believe that, before COATS may be retired, the CAT would need to achieve a sustained error rate for a period of at least 180 days of 5% or lower measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).⁴⁴ Phlx proposes to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. Phlx believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds while also ensuring that single-day measurements do not unduly affect the overall measurements. Phlx proposes to measure the appropriate error rates in the aggregate, rather than firm-by-firm. In addition, Phlx proposes to measure the error rates for options only, not equity securities, as only options are subject to COATS. The 2% and 5% error rates are in line with the proposed retirement threshold for OATS.

In addition to these minimum error rates before COATS can be retired, Phlx believes that during the minimum 180-day period during which the thresholds are

⁴³ Id.

⁴⁴ The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. See CAT NMS Plan, at C-15.

calculated, Phlx's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. Phlx believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

If the Commission approves the proposed rule change, Phlx will announce the implementation date of the proposed rule change in a Regulatory Notice that will be published once Phlx concludes the thresholds for accuracy and reliability described above have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴⁶ 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.

Phlx believes that the proposed rule change fulfills the obligation in the CAT NMS Plan for Phlx to submit a proposed rule change to eliminate or modify duplicative rules. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in

⁴⁵ 15 U.S.C. 78f(b).

⁴⁶ 15 U.S.C. 78f(b)(5).

the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”⁴⁷ As this proposal implements the Plan, Phlx believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

Moreover, the purpose of the proposed rule change is to eliminate rules that require the submission of duplicative data to the exchange. The elimination of such duplicative requirements will reduce unnecessary costs and other compliance burdens for Phlx and its members, and therefore, will enhance the efficiency of the securities markets. Furthermore, Phlx believes that the approach set forth in the proposed rule change strikes the appropriate balance between ensuring that Phlx is able to continue to fulfill its statutory obligation to protect investors and the public interest by ensuring its surveillance of market activity remains accurate and effective while also establishing a reasonable timeframe for elimination or modification of its rules that will be rendered duplicative after implementation of the CAT.

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

Section 6(b)(8) of the Exchange Act⁴⁸ requires that the Exchange’s rules not impose any burden on competition that is not necessary or appropriate. Phlx 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 Exchange Act. Phlx notes that the proposed rule change implements the requirements of the CAT NMS Plan approved by the Commission regarding the elimination of rules and systems that are

⁴⁷ Approval Order at 84697.

⁴⁸ 15 U.S.C. 78f(b)(8).

duplicative the CAT, and is designed to assist Phlx in meeting its regulatory obligations pursuant to the Plan. Similarly, all exchanges and FINRA are proposing the elimination of their rules related to OATS, EBS and COATS to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive rule filing and, therefore, it does not raise competition issues between and among the self-regulatory organizations and/or their members.

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

Although written comments on the proposed rule change were not solicited, two commenters, the Financial Information Forum ("FIF") and the Securities Industry and Financial Markets Association ("SIFMA"), submitted letters to the Participants regarding the retirement of systems related to the CAT.⁴⁹ In its comment letter, with regard to the retirement of duplicative systems more generally, FIF recommends that the Participants continue the effort to incorporate current reporting obligations into the CAT in order to replace existing reportable systems with the CAT. In addition, FIF further recommends that, once a CAT Reporter achieves satisfactory reporting data quality, the CAT Reporter should be exempt from reporting to any duplicative reporting systems. FIF believes that these recommendations "would serve both an underlying regulatory objective of more immediate and accurate access to data as well as an industry objective of reduced costs and burdens of regulatory oversight."⁵⁰ In its comments about EBS specifically, FIF

⁴⁹ Letter from William H. Hebert, FIF, to Participants re: Milestone for Participants' rule change filings to eliminate/modify duplicative rules, dated April 12, 2017 ("FIF Letter"); Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor, dated April 4, 2017 ("SIFMA Letter"), at 2.

⁵⁰ FIF Letter at 2.

states that the retirement of the EBS requirements should be a high priority, and that the CAT should be designed to include the requisite data elements to permit the rapid retirement of the EBS system.⁵¹ Similarly, SIFMA states that “the establishment of the CAT must be accompanied by the prompt elimination of duplicative systems,” and “recommend[ed] that the initial technical specifications be designed to facilitate the immediate retirement of . . . duplicative reporting systems.”⁵²

As discussed above, Phlx agrees with the commenters that the OATS, EBS and COATS reporting requirements should be replaced by the CAT reporting requirements as soon as accurate and reliable CAT Data is available. To this end, Phlx anticipates that the CAT will be designed to collect the data necessary to permit the retirement of OATS, EBS and COATS. As discussed above, Phlx disagrees with the recommendation to provide individual exemptions to those CAT Reporters who obtain satisfactory data reporting quality; however, Phlx supports amendments to the CAT NMS Plan that would accelerate reporting for Small Industry Members that are currently reporting to OATS to facilitate the retirement of that system.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

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

Not applicable.

⁵¹ Id.

⁵² SIFMA Letter at 2.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2017-43)

May __, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change to Amend Rule 785, Rule 1022, Rule 1063, Rule 3400 and Option Floor Procedure Advices and Order and Decorum Regulations C-2

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 May 26, 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 Rule 3400 series relating to the Order Audit Trail System, Rule 785 relating to Electronic Blue Sheets, Rule 1022 relating to account identification, and Rule 1063 and Option Floor Procedure Advices and Order and Decorum Regulations C-2 relating to the Consolidated Options Audit Trail System to reflect changes to these rules once members are effectively reporting to the Consolidated Audit Trail (“CAT”) and the CAT’s accuracy and reliability meets certain standards as described below.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

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

1. Purpose

The Exchange proposes to amend the Rule 3400 series relating to the Order Audit Trail System ("OATS"), Rule 785 relating to Electronic Blue Sheets ("EBS"), Rule 1022 relating to account identification, and Rule 1063 Option Floor Procedure Advices and Order and Decorum Regulations C-2 relating to the Consolidated Options Audit Trail System ("COATS") to reflect changes to these rules once members are effectively reporting to the CAT, and the CAT's accuracy and reliability meets certain standards as described below.³

Background

Bats BYX Exchange, Inc.; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange,

³ The Exchange initially filed the proposed rule change on May 15, 2017 (SR-Phlx-2017-38). On May 26, 2017, the Exchange withdrew that filing and submitted this filing.

Incorporated; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; FINRA; International Securities Exchange, LLC; Investors' Exchange LLC; ISE Gemini, LLC; ISE Mercury, LLC; Miami International Securities Exchange LLC; MIAX PEARL, LLC; NASDAQ BX, Inc.; NASDAQ PHLX LLC; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc. (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act⁴ and Rule 608 of Regulation NMS thereunder,⁵ the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").⁶ The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.⁷ The Plan was published for comment in the Federal Register on May 17, 2016,⁸ and approved by the Commission, as modified,

⁴ 15 U.S.C. 78k-1.

⁵ 17 CFR 242.608.

⁶ See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017).

National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Release No. 79902 (Jan. 30, 2017), 82 FR 9258 (February 3, 2017).

⁷ 17 CFR 242.613.

⁸ Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

on November 15, 2016.⁹ On March 15, 2017, the Commission approved the new Phlx Rule 900A Series to implement provisions of the CAT NMS Plan that are applicable to Phlx members.¹⁰

The CAT NMS Plan is designed to create, implement, and maintain a consolidated audit trail that will capture in a single consolidated data source customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution. Among other things, Section C.9. of Appendix C to the Plan, as modified by the Commission, requires each Participant to “file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC’s approval of the CAT NMS Plan.”¹¹ The Plan notes that “the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.”¹² Finally, the Plan requires the rule filing to discuss the following:

(i) specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired;

⁹ Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“Approval Order”).

¹⁰ See Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR-Phlx-2017-07).

¹¹ CAT NMS Plan, Appendix C, Section C.9.

¹² See id.

(ii) whether the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems; and

(iii) whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.¹³

Changes to OATS

In response to these requirements, Phlx is proposing to delete the Rule 3400 Series (the “OATS Rules”) from the Phlx rulebook once the CAT achieves the specific accuracy and reliability standards described below, and Phlx has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations,¹⁴ and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.¹⁵

¹³ See id.

¹⁴ As noted in the Participants’ September 23, 2016 response to comment letters on the Plan, the Participants “worked to keep [the CAT] gap analyses up-to-date by including newly-added data fields in these duplicative systems, such as the new OATS data fields related to the tick size pilot and ATS order book changes, in the gap analyses.” See Letter from Participants to Brent J. Fields, Secretary, Commission, dated September 23, 2016, at 21. The Participants noted that they “will work with the Plan Processor and the industry to develop detailed Technical Specifications to ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.” Id.

¹⁵ Phlx notes that the OATS Rules were originally proposed to fulfill one of the undertakings contained in an order issued by the Commission relating to the

Specific Accuracy and Reliability Standards

The first issue the Plan requires the proposed rule change to discuss is “specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.”¹⁶ Phlx believes that relevant error rates are the primary, but not the sole, metric by which to determine the CAT’s accuracy and reliability and will serve as the baseline requirement needed before OATS can be retired and requests for trading information can be amended to account for information being available in the CAT.

As discussed in Section A.3.(b) of Appendix C to the CAT NMS Plan, the Participants established an initial Error Rate, as defined in the Plan, of 5% on initially submitted data (i.e., data as submitted by a CAT Reporter before any required corrections are performed). The Participants noted in the Plan that their expectation was that “error rates after reprocessing of error corrections will be de minimis.”¹⁷ The Participants based this Error Rate on their consideration of “current and historical OATS Error Rates, the magnitude of new reporting requirements on the CAT Reporters and the fact that many CAT Reporters may have never been obligated to report data to an audit trail.”¹⁸

settlement of an enforcement action against the National Association of Securities Dealers, Inc. for failure to adequately enforce its rules. See Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998). In approving the OATS Rules, the Commission concluded that OATS satisfied the conditions of the SEC’s order and was consistent with the Exchange Act. See id. at 12566-67.

¹⁶ See id.

¹⁷ See CAT NMS Plan, Appendix C, Section A.3(b), at n.102.

¹⁸ Id.

Phlx agrees with the Participants' conclusion that a 5% pre-correction threshold "strikes the balance of adapting to a new reporting regime, while ensuring that the data provided to regulators will be capable of being used to conduct surveillance and market reconstruction, as well as having a sufficient level of accuracy to facilitate the retirement of existing regulatory reports and systems where possible."¹⁹ However, Phlx believes that, when assessing the accuracy and reliability of the data for the purposes of retiring OATS, the error thresholds should be measured in more granular ways and should also include minimum error rates of post-correction data, which represents the data most likely to be used by Phlx to conduct surveillance. Although Phlx is proposing to measure the appropriate error rates in the aggregate, rather than firm-by-firm, Phlx believes that the error rates for equity securities should be measured separately from options since options orders are not currently reported regularly or included in OATS.

To ensure the CAT's accuracy and reliability, Phlx is proposing that, before OATS could be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting in each of the categories below for a period of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis and 2% or lower on a post-correction basis (measured at T+5).²⁰ Phlx is proposing to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. Phlx believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and

¹⁹ Id.

²⁰ The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. See CAT NMS Plan, Appendix C, Section A.2(a).

reliability thresholds for Industry Member reporting while also ensuring that single-day measurements do not unduly affect the overall measurements.

Phlx is proposing to use error rates in each the following categories, measured separately for options and for equities, to assess whether the threshold pre- and post-correction error rates are being met:

- Rejection Rates and Data Validations. Data validations for the CAT, while not expected to be designed the same as OATS, must be functionally equivalent to OATS in accordance with the CAT NMS Plan (i.e., the same types of basic data validations must be performed by the Plan Processor to comply with the CAT NMS Plan requirements). Appendix D of the Plan, for example, requires that certain file validations²¹ and syntax and context checks be performed on all submitted records.²² If a record does not pass these basic data validations, it must be rejected and returned to the CAT Reporter to be corrected and resubmitted.²³

The specific validations can be determined only after the Plan Processor has

²¹ See CAT NMS Plan, Appendix D, Section 7.2. The Plan requires the Plan Processor to confirm that file transmission and receipt are in the correct formats, including validation of header and trailers on the submitted report, confirmation of a valid Exchange-Assigned Market Participant Identifier, and verification of the number of records in the file. Id.

²² See id. The Plan notes that syntax and context checks would include format checks (i.e., that data is entered in the specified format); data type checks (i.e., that the data type of each attribute conforms to the specifications); consistency checks (i.e., that all attributes for a record of a specified type are consistent); range/logic checks (i.e., that each attribute for every record has a value within specified limits and the values provided are associated with the event type they represent); data validity checks (i.e., that each attribute for every record has an acceptable value); completeness checks (i.e., that each mandatory attribute for every record is not null); and timeliness checks (i.e., that the records were submitted within the submission timelines). Id.

²³ See id.

- finalized the Industry Member Technical Specifications; however, the Plan also requires the Plan Processor to provide daily statistics on rejection rates after the data has been processed, including the number of files rejected and accepted, the number of order events accepted and rejected, and the number of each type of report rejected.²⁴ Phlx is proposing that, over the 180-day period, aggregate rejection rates (measured separately for equities and options) must be no more than 5% pre-correction or 2% post-correction across all CAT Reporters.
- Intra-Firm Linkages. The Plan requires that “the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order.”²⁵ At a minimum, this requirement includes the creation of an order lifecycle between “[a]ll order events handled within an individual CAT Reporter, including orders routed to internal desks or departments with different functions (e.g., an internal ATS).”²⁶ Phlx is proposing that aggregate intra-firm linkage rates across all Industry Member Reporters must be at least 95% pre-correction and 98% post-correction.
 - Inter-Firm Linkages. The order linkage requirements in the Plan also require that the Plan Processor be able to create the lifecycle between orders routed between broker-dealers.²⁷ Phlx is proposing that at least a 95% pre-correction and 98%

²⁴ See id.

²⁵ CAT NMS Plan, Appendix D, Section 3.

²⁶ Id.

²⁷ Id.

post-correction aggregate match rate be achieved for orders routed between two Industry Member Reporters.²⁸

- Order Linkage Rates. In addition to creating linkages within and between broker-dealers, the Plan also includes requirements that the Plan Processor be able to create lifecycles to link various pieces of related orders.²⁹ For example, the Plan requires linkages between customer orders and “representative” orders created in firm accounts for the purpose of facilitating a customer order, various legs of option/equity complex orders, riskless principal orders, and orders worked through average price accounts.³⁰ Phlx is proposing that there be at least a 95% pre-correction and 98% post-correction linkage rate for multi-legged orders (e.g., related equity/options orders, VWAP orders, riskless principal transactions).
- Exchange and TRF/ORF Match Rates. The Plan requires that an order lifecycle be created to link “[o]rders routed from broker-dealers to exchanges” and “[e]xecuted orders and trade reports.”³¹ Phlx is proposing at least a 95% pre-correction and 98% post-correction aggregate match rate to each equity exchange for orders routed from Industry Members to an exchange and, for over-the-counter executions, the same match rate for orders linked to trade reports.

In addition to these minimum error rates and matching thresholds that generally must be met before OATS can be retired, Phlx believes that during the minimum 180-day period during which the thresholds are calculated, Phlx’s use of the data in the CAT must

²⁸ This assumes linkage statistics will include both unlinked route reports and new orders where no related route report could be found.

²⁹ See CAT NMS Plan, Appendix D, Section 3.

³⁰ See id.

³¹ Id.

confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. Phlx believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

Small Industry Member Data Availability

The second issue the Plan requires the proposed rule change to address is “whether the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.”

Phlx believes that there is no effective way to retire OATS until all current OATS reporters are reporting to the CAT. Although Technical Specifications for Industry Members are not yet available, PHLX believes it would be inefficient, less reliable, and more costly to attempt to marry the OATS and CAT databases for a temporary period to allow some Phlx members to report to CAT while others continue to report to OATS. Consequently, Phlx has concluded at this time that having data from those Small Industry Members currently reporting to OATS available two years after the Effective Date would substantially facilitate a more expeditious retirement of OATS. For this reason, Phlx supports an amendment to the Plan that would require current OATS Reporters that are “Small Industry Members” to report two years after the Effective Date (instead of three). Phlx intends to work with the other Participants to submit a proposed amendment to the

Plan to require Small Industry Members that are OATS Reporters to report two years after the Effective Date.

Phlx has identified approximately 300 member firms that currently report to OATS and meet the definition of “Small Industry Member;” however, only ten of these firms submit information to OATS on their own behalf, and eight of the ten firms report very few orders to OATS.³² The vast majority of these 300 firms use third parties to fulfill their reporting obligations, and many of these third parties will begin reporting to CAT in November 2018. Consequently, Phlx believes that the burden on current OATS Reporters that are “Small Industry Members” would not be significant if those firms are required to report to CAT beginning in November 2018 rather than November 2019. The burdens, however, are significantly greater for those firms that are not reporting to OATS currently; therefore, Phlx does not believe it would be necessary or appropriate to accelerate CAT reporting for “Small Industry Members” that are not currently reporting to OATS, and PHLX would not support an amendment to the Plan to accelerate CAT reporting for “Small Industry Members” that are not currently OATS Reporters.

Individual Industry Member Exemptions

The final issue the Plan requires the proposed rule change to address is “whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.”

³² For example, in one recent month, eight of the ten firms submitted fewer than 100 reports during the month, with four firms submitting fewer than 50.

As described above, Phlx believes that a single cut-over from OATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the OATS requirements on a firm-by-firm basis. The primary benefit to a firm-by-firm exemptive approach would be to reduce the amount of time an individual firm is required to report to a legacy system (e.g., OATS) if it is also accurately and reliably reporting to the CAT. Phlx believes that the overall accuracy and reliability thresholds for the CAT described above would need to be met under any conditions before firms could stop reporting to OATS. Moreover, as discussed above, Phlx supports amending the Plan to accelerate the reporting requirements for Small Industry Members that are OATS Reporters to report on the same timeframe as all other OATS Reporters. If such an amendment were approved by the Commission, there would be no need to exempt members from OATS requirements on a firm-by-firm basis.

Changes to EBS and Account Identification Rules

Rule 785 is Phlx's rule regarding the automated submission of specific trading data to Phlx upon request using the Electronic Blue Sheet ("EBS") system. Rule 785 requires members to submit certain trade information as prescribed by the Exchange, including, for proprietary transactions, the clearing house number or alpha symbol of the member submitting the data, the identifying symbol assigned to the security, and the date the transaction was executed.

Rule 1022 imposes certain account identification requirements on Specialists and Registered Options Traders. Specifically, Rule 1022 requires those market participants to file with the Exchange upon request and keep current a list identifying all accounts for stock, Exchange-Traded Fund Shares, option and related securities or foreign currencies,

physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity and other related trading in which the Specialist or Registered Options Trader may, directly or indirectly, engage in trading activities or over which they exercise investment discretion. That Rule prohibits a Specialist or Registered Options Trader from engaging in trading in any of these instruments in an account that has not been reported to the Exchange pursuant to this rule.

Once broker-dealer reporting to the CAT has begun, the CAT will contain the data the Participants would otherwise have requested via the EBS system for purposes of NMS Securities and OTC Equity Securities. Consequently, Phlx will not need to use the EBS system or request information pursuant to these rules for NMS Securities or OTC Equity Securities for time periods after CAT reporting has begun if the appropriate accuracy and reliability thresholds are achieved, including an acceptable accuracy rate for customer and account information. However, these rules cannot be completely eliminated immediately upon the CAT achieving the appropriate thresholds because Exchange staff may still need to request information pursuant to these rules for trading activity occurring before a member was reporting to the CAT.³³ In addition, these rules apply to information regarding transactions involving securities that will not be reportable to the CAT, such as fixed-income securities; thus, these rules must remain in effect with respect to those transactions indefinitely or until those transactions are captured in the CAT.

³³ Firms are required to maintain the trade information for pre-CAT transactions in equities and options pursuant to applicable rules, such as books and records retention requirements, for the relevant time period, which is generally three or six years depending upon the record. See 17 CFR 240.17a-3(a), 240.17a-4.

The proposed rule change proposes to add new Supplementary Material to Rule 785 and Rule 1022 to clarify how Phlx will request data under these rules after members are reporting to the CAT. Specifically, the proposed Supplementary Material to these rules will note that the Exchange will request information under these rules only if the information is not available in the CAT because, for example, the transactions in question occurred before the firm was reporting information to the CAT or involved securities that are not reportable to the CAT. In essence, under the new Supplementary Material, the Exchange will make requests under these rules if and only if the information is not otherwise available through the CAT.

The CAT NMS Plan states, however, that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.³⁴ Accordingly, as discussed in more detail below, Phlx believes that the EBS data may be replaced by CAT Data at a date after all Industry Members are reporting to the CAT when the proposed error rate thresholds have been met, and Phlx has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

Phlx believes CAT Data should not be used in place of EBS data until all Participants and Industry Members are reporting data to CAT. In this way, Phlx will continue to have access to the necessary data to perform its regulatory duties.

³⁴

Id.

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether “the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.”³⁵ Phlx believes that the submission of data to the CAT by Small Industry Members a year earlier than is required in the CAT NMS Plan, at the same time as the other Industry Members, would expedite the replacement of EBS data with CAT Data, as Phlx believes that the CAT would then have all necessary data from the Industry Members for Phlx to perform the regulatory surveillance that currently is performed via EBS. For this reason, Phlx supports amending the CAT NMS Plan to require Small Industry Members to report data to the CAT two years after the Effective Date (instead of three), and intends to work with other Participants toward that end.

The CAT NMS Plan requires that this rule filing address “whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.”³⁶ Phlx believes that a single cut-over from EBS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the EBS requirements on a firm-by-firm basis. Phlx believes that providing such individual exemptions to Industry Members would be inefficient, more costly, and less reliable than the single cut-over. Providing individual exemptions would require the exchanges to create, for a brief temporary period, a cross-system regulatory function and to integrate

³⁵ Id.

³⁶ Id.

data from EBS and the CAT to avoid creating any regulatory gaps as a result of such exemptions. Such a function would be costly to create and would give rise to a greater likelihood of data errors or other issues. Given the limited time in which such exemptions would be necessary, Phlx does not believe that such exemptions would be an appropriate use of limited resources. Moreover, the primary benefit to a firm-by-firm exemptive approach would be to reduce the amount of time an individual firm is required to comply with EBS if it is also accurately and reliably reporting to the CAT. Phlx believes that the overall accuracy and reliability thresholds for the CAT described above would need to be met under any conditions before firms could stop reporting to EBS, and as discussed above, by accelerating Small Industry Members to report on the same timeframe as all other Industry Members, there is no need to exempt members from EBS requirements on a firm-by-firm basis.

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide “specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.”³⁷ Phlx believes that it is critical that the CAT Data be sufficiently accurate and reliable for Phlx to perform the regulatory functions that it now performs via EBS. Accordingly, Phlx believes that the CAT Data should meet specific quantitative error rates, as well as certain qualitative requirements.

Phlx believes that, before CAT Data may be used in place of EBS data, the CAT would need to achieve a sustained error rate for a period of at least 180 days of 5% or

³⁷ Id.

lower measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).³⁸ Phlx proposes to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. Phlx believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds while also ensuring that single-day measurements do not unduly affect the overall measurements. Phlx proposes to measure the appropriate error rates in the aggregate, rather than firm-by-firm. The 2% and 5% error rates are in line with the proposed retirement threshold for other systems, such as OATS and COATS.

In addition to these minimum error rates before using CAT Data instead of EBS data, Phlx believes that during the minimum 180-day period during which the thresholds are calculated, Phlx's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. Phlx believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

³⁸ The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. See CAT NMS Plan, at C-15.

Changes to COATS

The options exchanges utilize COATS to collect and review data regarding options orders, quotes and transactions. The Participants have provided COATS technical specifications to the Plan Processor for the CAT for use in developing the Technical Specifications for the CAT, and the Participants are working with the Plan Processor to include the necessary COATS data elements in the CAT Technical Specifications. Accordingly, although the Technical Specifications for the CAT have not yet been finalized, Phlx and the other options exchanges propose to eliminate COATS in accordance with the proposed timeline discussed below.

Phlx adopted Rule 1063 to implement certain reporting requirements related to COATS, and therefore proposes to eliminate the information reporting requirements of that rule and replacing those requirements with a requirement that members report information pursuant to this rule as required by Phlx's CAT Compliance Rule, Rule 900A.³⁹ Phlx also proposes to make a corresponding change to Option Floor Procedure Advices and Order and Decorum Regulations C-2.

³⁹ COATS was developed to comply with an order of the Commission requiring the then-options exchanges to "design and implement" a consolidated audit trail to "enable the options exchanges to reconstruct markets promptly, effectively surveil them and enforce order handling, firm quote, trade reporting and other rules." See Section IV.B.e.(v) of the Commission's Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions (the "Order"). See Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File No. 3-10282. As noted, the Plan is designed to create, implement and maintain a CAT that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. Phlx has already adopted rules to enforce compliance by its Industry Members, as applicable, with the provisions of the Plan. Once the CAT is fully operational, it will be appropriate to delete Phlx's

Rule 1063(e) describes the operations and requirements of the Floor Broker Management System, which is designed to create an electronic audit trail for equity, equity index and U.S. dollar-settled foreign currency options orders represented by Floor Brokers on the Exchange's Options Floor. Among other things, Rule 1063(e) requires a Floor Broker or that Floor Broker's employees, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, to record order information including (i) the order type (i.e., customer, firm, broker-dealer, professional) and order receipt time; (ii) the option symbol; (iii) buy, sell, cross or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order; and (v) number of contracts.

Option Floor Procedure Advices and Order and Decorum Regulations C-2 repeats these requirements, and imposes a schedule of fines for violating these requirements.

The CAT NMS Plan states that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.⁴⁰ As discussed in more detail below, Phlx and the other options exchanges believe that COATS may be retired at a date after all Industry Members are reporting to the CAT when the proposed error rate thresholds have been met, and Phlx has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow Phlx to continue to meet its

rules implemented to comply with the Order as duplicative of the CAT. Accordingly, Phlx believes that it would continue to be in compliance with the requirements of the Order once the CAT is fully operational and the COATS rules are deleted.

⁴⁰ Id.

surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

Phlx believes COATS should not be retired until all Participants and Industry Members that report data to COATS are reporting comparable data to the CAT. In this way, Phlx will continue to have access to the necessary data to perform its regulatory duties.

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether “the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.”⁴¹ The Exchange believes COATS should not be retired until all Participants and Industry Members that report data to COATS are reporting comparable data to the CAT. While the early submission of options data to the CAT by Small Industry Members could expedite the retirement of COATS, the Exchange believes that it premature to consider such a change and that additional analysis would be necessary to determine whether such early reporting by Small Industry Members would be feasible.

The CAT NMS Plan requires that this rule filing address “whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.”⁴² Phlx believes that a single cut-over from COATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members

⁴¹ Id.

⁴² Id.

from the COATS requirements on a firm-by-firm basis. Phlx and the other options exchanges believe that providing such individual exemptions to Industry Members would be inefficient, more costly, and less reliable than the single cut-over. Providing individual exemptions would require the options exchanges to create, for a brief temporary period, a cross-system regulatory function and to integrate data from COATS and the CAT to avoid creating any regulatory gaps as a result of such exemptions. Such a function would be costly to create and would give rise to a greater likelihood of data errors or other issues. Given the limited time in which such exemptions would be necessary, Phlx and the other options exchanges do not believe that such exemptions would be an appropriate use of limited resources.

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide “specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.”⁴³ Phlx believes that it is critical that the CAT Data be sufficiently accurate and reliable for the Exchange to perform the regulatory functions that it now performs via COATS. Accordingly, Phlx believes that the CAT Data should meet specific quantitative error rates, as well as certain qualitative requirements.

Phlx and the other options exchanges believe that, before COATS may be retired, the CAT would need to achieve a sustained error rate for a period of at least 180 days of 5% or lower measured on a pre-correction or as-submitted basis, and 2% or lower on a

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Id.

post-correction basis (measured at T+5).⁴⁴ Phlx proposes to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. Phlx believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds while also ensuring that single-day measurements do not unduly affect the overall measurements. Phlx proposes to measure the appropriate error rates in the aggregate, rather than firm-by-firm. In addition, Phlx proposes to measure the error rates for options only, not equity securities, as only options are subject to COATS. The 2% and 5% error rates are in line with the proposed retirement threshold for OATS.

In addition to these minimum error rates before COATS can be retired, Phlx believes that during the minimum 180-day period during which the thresholds are calculated, Phlx's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. Phlx believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

⁴⁴ The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. See CAT NMS Plan, at C-15.

If the Commission approves the proposed rule change, Phlx will announce the implementation date of the proposed rule change in a Regulatory Notice that will be published once Phlx concludes the thresholds for accuracy and reliability described above have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴⁶ 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.

Phlx believes that the proposed rule change fulfills the obligation in the CAT NMS Plan for Phlx to submit a proposed rule change to eliminate or modify duplicative rules. In approving the Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”⁴⁷ As this proposal implements the Plan, Phlx believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

Moreover, the purpose of the proposed rule change is to eliminate rules that require the submission of duplicative data to the exchange. The elimination of such

⁴⁵ 15 U.S.C. 78f(b).

⁴⁶ 15 U.S.C. 78f(b)(5).

⁴⁷ Approval Order at 84697.

duplicative requirements will reduce unnecessary costs and other compliance burdens for Phlx and its members, and therefore, will enhance the efficiency of the securities markets. Furthermore, Phlx believes that the approach set forth in the proposed rule change strikes the appropriate balance between ensuring that Phlx is able to continue to fulfill its statutory obligation to protect investors and the public interest by ensuring its surveillance of market activity remains accurate and effective while also establishing a reasonable timeframe for elimination or modification of its rules that will be rendered duplicative after implementation of the CAT.

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

Section 6(b)(8) of the Exchange Act⁴⁸ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate. Phlx 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 Exchange Act. Phlx notes that the proposed rule change implements the requirements of the CAT NMS Plan approved by the Commission regarding the elimination of rules and systems that are duplicative the CAT, and is designed to assist Phlx in meeting its regulatory obligations pursuant to the Plan. Similarly, all exchanges and FINRA are proposing the elimination of their rules related to OATS, EBS and COATS to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive rule filing and, therefore, it does not raise competition issues between and among the self-regulatory organizations and/or their members.

⁴⁸ 15 U.S.C. 78f(b)(8).

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

Although written comments on the proposed rule change were not solicited, two commenters, the Financial Information Forum (“FIF”) and the Securities Industry and Financial Markets Association (“SIFMA”), submitted letters to the Participants regarding the retirement of systems related to the CAT.⁴⁹ In its comment letter, with regard to the retirement of duplicative systems more generally, FIF recommends that the Participants continue the effort to incorporate current reporting obligations into the CAT in order to replace existing reportable systems with the CAT. In addition, FIF further recommends that, once a CAT Reporter achieves satisfactory reporting data quality, the CAT Reporter should be exempt from reporting to any duplicative reporting systems. FIF believes that these recommendations “would serve both an underlying regulatory objective of more immediate and accurate access to data as well as an industry objective of reduced costs and burdens of regulatory oversight.”⁵⁰ In its comments about EBS specifically, FIF states that the retirement of the EBS requirements should be a high priority, and that the CAT should be designed to include the requisite data elements to permit the rapid retirement of the EBS system.⁵¹ Similarly, SIFMA states that “the establishment of the CAT must be accompanied by the prompt elimination of duplicative systems,” and

⁴⁹ Letter from William H. Hebert, FIF, to Participants re: Milestone for Participants' rule change filings to eliminate/modify duplicative rules, dated April 12, 2017 (“FIF Letter”); Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor, dated April 4, 2017 (“SIFMA Letter”), at 2.

⁵⁰ FIF Letter at 2.

⁵¹ Id.

“recommend[ed] that the initial technical specifications be designed to facilitate the immediate retirement of . . . duplicative reporting systems.”⁵²

As discussed above, Phlx agrees with the commenters that the OATS, EBS and COATS reporting requirements should be replaced by the CAT reporting requirements as soon as accurate and reliable CAT Data is available. To this end, Phlx anticipates that the CAT will be designed to collect the data necessary to permit the retirement of OATS, EBS and COATS. As discussed above, Phlx disagrees with the recommendation to provide individual exemptions to those CAT Reporters who obtain satisfactory data reporting quality; however, Phlx supports amendments to the CAT NMS Plan that would accelerate reporting for Small Industry Members that are currently reporting to OATS to facilitate the retirement of that system.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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:

⁵² SIFMA Letter at 2.

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-2017-43 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-2017-43. 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-2017-43 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.⁵³

Robert W. Errett
Deputy Secretary

⁵³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

NASDAQ PHLX Rules

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Rules of the Exchange

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Rule 785. Automated Submission of Trading Data

A member or member organization shall submit such of the following trade data elements specified below in such automated format as may be prescribed by the Exchange from time to time, in regard to such transaction or transactions as may be subject of a particular request for information made by the Exchange:

(a) If the transaction was a proprietary transaction effected or caused to be effected by the member or member organization for any account in which such member or member organization, or any member, allied member, approved person, partner, officer, director, or employee thereof, is directly or indirectly interested, such member or member organization shall submit or cause to be submitted the following information:

- 1) Clearing house number, or alpha symbol as used by the member or the member organization submitting the data;
- 2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the member(s) or member organization(s) on the opposite side of the transaction;
- 3) Identifying symbol assigned to the security;
- 4) Date transaction was executed;
- 5) Number of shares, or quantity of bonds or options contracts for each specific transaction and whether each transaction was a purchase, sale, short sale, and if an options contract whether open long or short or close long or short;
- 6) Transaction price;
- 7) Account number; and
- 8) Market center where transaction was executed.

(b) If the transaction was effected or caused to be effected by the member or member organization for any customer account, such member organization shall submit or cause to be submitted the following information:

- 1) Data elements (1) through (8) as contained in paragraph (a) above; and
- 2) Customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name and the tax identification number(s).
- 3) If transaction was effected from a member broker-dealer customer, whether the broker-dealer was acting as principal or agent on the transaction or transactions that are the subject of the Exchange's request.

(c) In addition to the above trade data elements, a member or member organization shall submit such other information in such automated format as may be prescribed by the Exchange, as may from time to time be required.

(d) The Exchange may grant exceptions, in such cases and for such time periods as it deems appropriate, from the requirement that the data elements prescribed in paragraphs (a) and (b) above be submitted to the Exchange in an automated format.

••• **Supplementary Material:** -----

The Exchange will request information under this Rule only if the information is not available in the CAT because, for example, the transactions in question occurred before the firm was reporting information to the CAT or involved securities that are not reportable to the CAT.

* * * * *

Rule 1022. Securities Accounts and Orders of Specialists and Registered Options Traders

(a) *Identification of Accounts*—In a manner prescribed by the Exchange, each Specialist and Registered Options Trader shall file with the Exchange upon request and keep current a list identifying all accounts for stock, Exchange-Traded Fund Share, option and related securities or foreign currencies, physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity and other related trading in which the Specialist or Registered Options Trader may, directly or indirectly, engage in trading activities or over which he exercises investment discretion. No Specialist or Registered Options Trader shall engage in stock, Exchange-Traded Fund Share, option, or related securities or foreign currencies, physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity and other related trading in an account which has not been reported (pursuant to this Rule) in a manner prescribed by the Exchange.

(b) Reserved.

(c) Reserved.

(d) No Specialist or Registered Options Trader in options on a foreign currency shall fail to make available to the Exchange such books, records or other information maintained by or in the possession of such person, or any corporation or partnership associated with such person's member organization, pertaining to transactions by such person, corporation or partnership for its own account in any foreign currency with respect to which options are traded on the Exchange, in any futures contract on such a foreign currency, in any option contract on such a foreign currency (including options on foreign currency futures contracts), or in other foreign currency derivatives as may be called for under the Rules of the Exchange or as may be requested by the Exchange in the course of any investigation, any examination or other official inquiry.

••• *Commentary:* -----

.01 - .02 No Change.

.03 The Exchange will request information under this Rule only if the information is not available in the CAT because, for example, the transactions in question occurred before the firm was reporting information to the CAT or involved securities that are not reportable to the CAT.

* * * * *

Rule 1063. Responsibilities of Floor Brokers

(a) – (d) No Change.

(e) (i) *Options Floor Broker Management System.* In order to create an electronic audit trail for equity, equity index and U.S. dollar-settled foreign currency options orders represented by Floor Brokers on the Exchange's Options Floor, a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Broker Management System ("FBMS") (as described in Rule 1080, Commentary .06). The [following] specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees and shall consist of the elements required by the Rule 900A Series.: (i) the order type (i.e., customer, firm, broker-dealer, professional) and order receipt time; (ii) the option symbol; (iii) buy, sell, cross or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order as described in Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a multi-leg order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position; and (viii) The Options Clearing Corporation ("OCC") clearing number of the broker-dealer that submitted the order (collectively, the "required

information"). A Floor Broker must enter complete alpha/numeric identification assigned by the Exchange for all orders entered on behalf of Exchange Registered Option Traders. Any additional information with respect to the order shall be inputted into the Options Floor Broker Management System contemporaneously upon receipt, which may occur after the representation and execution of the order.] In the event of a malfunction in the Options Floor Broker Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be time stamped upon the execution of such an order. Floor Brokers or their employees shall enter the required information that is recorded on such trade tickets into the Exchange's electronic system for inclusion in the electronic audit trail.

(ii) – (iv) No Change.

(f) No Change.

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NASDAQ OMX PSX Rules

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[Rule 3400. Order Audit Trail System]

[Rule 3401. Definitions]

[For purposes of the Rule 3400 Series:

- (a) "Bunched Order" shall mean two or more orders that are aggregated prior to execution.
- (b) "Customer" shall mean a person other than a broker or dealer.
- (c) "NASDAQ OMX PSX" or "PSX" shall mean the service provided by the Exchange that, among other things, provides for the automated execution and reporting of transactions in securities.
- (d) "Electronic Communication Network" shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or over-the-counter market maker, and permits such orders to be executed in whole or in part, and as further defined in rule 600 of SEC Regulation NMS.
- (e) "Electronic Order" shall mean an order captured by a member organization in an electronic order-routing or execution system.
- (f) "Index Arbitrage Trade" shall mean an arbitrage trading strategy involving the purchase or sale of a "basket" or group of securities in conjunction with the purchase or

sale, or intended purchase or sale, of one or more cash-settled options or futures contracts on index stock groups, or options on any such futures contracts in an attempt to profit by the price difference, as further defined in New York Stock Exchange rule 132B.

(g) "Intermarket sweep order" shall have the same meaning as contained in Rule 600 of SEC Regulation NMS.

(h) "Manual Order" shall mean an order that is captured by a member organization other than in an electronic order-routing or execution system.

(i) "Order" shall mean any oral, written, or electronic instruction to effect a transaction in an equity security listed on the Exchange or the NASDAQ Stock Market that is received by a member organization from another person for handling or execution, or that is originated by a department of a member organization for execution by the same or another broker or dealer that is a FINRA member or an Exchange member organization, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member organization's market making activities.

(j) "Order Audit Trail System" shall mean the automated system owned and operated by FINRA that is designed to capture order information in equity securities listed on the Exchange and the NASDAQ Stock Market reported by member organizations for integration with trade and quotation information to provide FINRA with an accurate time sequenced record of orders and transactions.

(k) "Program Trade" shall mean a trading strategy involving the related purchase or sale of a group of 15 or more securities having a total market value of \$1 million or more, as further defined in New York Stock Exchange rule 132B.

(l) "Reporting Agent" shall mean a third party that enters into any agreement with a member organization pursuant to which the Reporting Agent agrees to fulfill such member organization's obligations under Rule 3405.

(m) "Reporting Member Organization" shall mean a member organization that receives or originates an order and has an obligation to record and report information under Rules 3404 and 3405. A member organization shall not be considered a Reporting Member Organization in connection with an order, if the following conditions are met:

- (1) the member organization engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member Organization;
- (2) the member organization does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member Organization;

- (3) the receiving Reporting Member Organization records and reports all information required under Rules 3404 and 3405 with respect to the order; and
- (4) the member organization has a written agreement with the receiving Reporting Member Organization specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules 3404 and 3405.

(n) "Proprietary Trading Firm" shall mean an Exchange member organization that trades its own capital and that does not have customers, and that is not a FINRA member. The funds used by a Proprietary Trading firm must be exclusively firm funds and all trading must be in the firm's accounts. Traders must be owners of, employees of, or contractors to the firm.]

[Rule 3402. Applicability]

[(a) Unless otherwise indicated, the requirements of the Rule 3400 Series are in addition to the requirements contained elsewhere in the Rules of the Exchange.

(b) Unless otherwise indicated, the requirements of the Rule 3400 Series shall apply to all Exchange member organizations and to their associated persons.

(c) Unless otherwise indicated, the requirements of the Rule 3400 Series shall apply to all executed or unexecuted orders for equity securities listed on the Exchange or on the NASDAQ Stock Market.]

[Rule 3403. Synchronization of Member Organization Business Clocks]

[Each member organization shall synchronize its business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the rules of the Exchange, with reference to a time source as designated by the Exchange, and shall maintain the synchronization of such business clocks in conformity with such procedures as are prescribed by the Exchange.]

[Rule 3404. Recording of Order Information]

[With respect to orders for securities listed on the NASDAQ Stock Market or the Exchange, member organizations and persons associated with a member organization shall comply with the following Rule:

(a) Procedures

(1) Subject to the terms and conditions contained in Rules 3402 through 3406, each Reporting Member Organization shall:

(A) immediately following receipt or origination of an order, record each item of information described in paragraph (b) of this Rule that applies to such order, and record any additional information described in paragraph (b) of this Rule that

applies to such order immediately after such information is received or becomes available; and

(B) immediately following the transmission of an order to another broker or dealer that is a FINRA member or an Exchange member organization, or from one department to another within the same member organization, record each item of information described in paragraph (c) of this Rule that applies with respect to such transmission; and

(C) immediately following the modification, cancellation, or execution of an order, record each item of information described in paragraph (d) of this Rule that applies with respect to such modification, cancellation, or execution.

(2) Each required record of the time of an event shall be expressed in terms of hours, minutes, and seconds.

(3) Each Reporting Member Organization shall, by the end of each business day, record each item of information required to be recorded under this Rule in such electronic form as is prescribed by the Exchange from time to time.

(4) Maintaining and Preserving Records

(A) Each Reporting Member Organization shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC rule 17a-4(b).

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEC rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in SEC rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEC rule 17a-4(f) and be maintained and preserved for the required time in that form.

(b) Order Origination and Receipt

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.

(1) an order identifier meeting such parameters as may be prescribed by the Exchange assigned to the order by the Reporting Member Organization that uniquely identifies the order for the date it was received;

(2) the identification symbol assigned by the Exchange to the security to which the order applies;

- (3) the market participant symbol assigned by the Exchange to the Reporting Member Organization;
- (4) the identification of any department or the identification number of any terminal where an order is received directly from a customer;
- (5) where the order is originated by a Reporting Member Organization, the identification of the department of the member organization that originates the order;
- (6) where the Reporting Member Organization is a party to an agreement described in Rule 3405(c), the identification of the Reporting Agent;
- (7) the number of shares to which the order applies;
- (8) the designation of the order as a buy or sell order;
- (9) the designation of the order as a short sale order;
- (10) the designation of the order as a market order, limit order, stop order or stop limit order;
- (11) any limit or stop price prescribed in the order;
- (12) the date on which the order expires, and, if the time in force is less than one day, the time when the order expires;
- (13) the time limit during which the order is in force;
- (14) any request by a customer that an order not be displayed, or that a block size order be displayed, pursuant to rule 604(b) of SEC Regulation NMS;
- (15) special handling requests, specified by the Exchange for purposes of this Rule;
- (16) the date and time the order is originated or received by a Reporting Member Organization;
- (17) an identification of the order as related to a Program Trade or an Index Arbitrage Trade;
- (18) the type of account, i.e., retail, wholesale, employee, proprietary, or any other type of account designated by the Exchange, for which the order is submitted; and
- (19) if the member is relying on the exception provided in FINRA Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers

in place at the department within the member where the order was received or originated.

(c) Order Transmittal

Order information required to be recorded under this Rule when an order is transmitted includes the following.

- (1) When a Reporting Member Organization transmits an order to a department within the member organization, the Reporting Member Organization shall record:
 - (A) the order identifier assigned to the order by the Reporting Member Organization,
 - (B) the market participant symbol assigned by the Exchange to the Reporting Member Organization,
 - (C) the date the order was first originated or received by the Reporting Member Organization,
 - (D) an identification of the department and nature of the department to which the order was transmitted,
 - (E) the date and time the order was received by that department,
 - (F) the number of shares to which the transmission applies, and
 - (G) any special handling requests.
- (2) When a member organization electronically transmits an order to another broker or dealer that is a FINRA member or an Exchange member organization, other than an order transmitted electronically for execution on an Electronic Communications Network:
 - (A) the transmitting Reporting Member Organization shall record:
 - (i) the order identifier assigned to the order by the Reporting Member Organization and the routed order identifier, if different, which the transmitting Reporting Member Organization also must provide to the receiving broker or dealer,
 - (ii) the market participant symbol assigned by the Exchange to the Reporting Member Organization,
 - (iii) the market participant symbol assigned by the Exchange to the broker or dealer to which the order is transmitted,

- (iv) the date the order was first originated or received by the Reporting Member Organization,
 - (v) the date and time the order is transmitted,
 - (vi) the number of shares to which the transmission applies, and
 - (vii) whether the order is an intermarket sweep order; and
- (B) the receiving broker or dealer shall record, in addition to all other information items in Rule 3404(b) that apply with respect to such order:
- (i) the routed order identifier assigned to the order by the member organization that transmits the order and
 - (ii) the market participant symbol assigned by the Exchange to the member organization that transmits the order.
- (3) When a member organization electronically transmits an order for execution on an Electronic Communications Network:
- (A) the transmitting Reporting Member Organization shall record:
- (i) the fact that the order was transmitted to an Electronic Communications Network,
 - (ii) the order identifier assigned to the order by the Reporting Member Organization and the routed order identifier, if different, which the transmitting Reporting Member Organization also must provide to the receiving Electronic Communications Network,
 - (iii) the market participant symbol assigned by the Exchange to the Reporting Member Organization,
 - (iv) the market participant symbol assigned by the Exchange to the Electronic Communications Network to which the order is transmitted,
 - (v) the date the order was first originated or received by the Reporting Member Organization,
 - (vi) the date and time the order is transmitted,
 - (vii) the number of shares to which the transmission applies, and
 - (viii) whether the order is an intermarket sweep order; and

(B) the receiving Electronic Communications Network shall record:

- (i) the fact that the order was received by an Electronic Communications Network,
- (ii) the routed order identifier assigned to the order by the member organization that transmits the order,
- (iii) the market participant symbol assigned by FINRA to the transmitting Reporting Member Organization, and
- (iv) other information items in Rule 3404(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

(4) When a member organization manually transmits an order to another broker that is a FINRA member or an Exchange member organization, other than to an Electronic Communications Network:

(A) the transmitting Reporting Member Organization shall record:

- (i) the fact that the order was transmitted manually,
- (ii) the order identifier assigned to the order by the Reporting Member Organization,
- (iii) the market participant symbol assigned by the Exchange to the Reporting Member Organization,
- (iv) the market participant symbol assigned by the Exchange to the broker or dealer to which the order is transmitted,
- (v) the date the order was first originated or received by the Reporting Member Organization,
- (vi) the date and time the order is transmitted,
- (vii) the number of shares to which the transmission applies,
- (viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member Organization, and
- (ix) whether the order is an intermarket sweep order; and

(B) the receiving broker or dealer shall record, in addition to all other information items in Rule 3404(b) that apply with respect to such order:

- (i) the fact that the order was received manually and
- (ii) the market participant symbol assigned by the Exchange to the member organization that transmits the order.

(5) When a member organization manually transmits an order to an Electronic Communications Network:

(A) the transmitting Reporting Member Organization shall record:

- (i) the fact that the order was transmitted manually,
- (ii) the order identifier assigned to the order by the Reporting Member Organization,
- (iii) the market participant symbol assigned by the Exchange to the Reporting Member Organization,
- (iv) the market participant symbol assigned by the Exchange to the Electronic Communications Network to which the order is transmitted,
- (v) the date the order was first originated or received by the Reporting Member Organization,
- (vi) the date and time the order is transmitted,
- (vii) the number of shares to which the transmission applies,
- (viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member Organization, and
- (ix) whether the order is an intermarket sweep order; and

(B) the receiving Electronic Communications Network shall record:

- (i) the fact that the order was received manually,
- (ii) the market participant symbol assigned by the Exchange to the transmitting Reporting Member Organization, and

(iii) other information items in Rule 3404(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

(6) When a member organization transmits an order to a person that is not a FINRA member or an Exchange member organization, including but not limited to a national securities exchange, the Reporting Member Organization shall record:

- (A) the fact that the order was transmitted to a non-member,
- (B) the order identifier assigned to the order by the Reporting Member Organization,
- (C) the market participant symbol assigned by FINRA to the Reporting Member Organization,
- (D) the date the order was first originated or received by the Reporting Member Organization,
- (E) the date and time the order is transmitted,
- (F) the number of shares to which the transmission applies,
- (G) for each manual order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member Organization,
- (H) the routed order identifier or other unique identifier required by the non-member receiving the order, as applicable,
- (I) identification of the non-member where the trade was transmitted, and
- (J) whether the order is an intermarket sweep order.

(d) Order Modifications, Cancellations, and Executions

Order information required to be recorded under this Rule when an order is modified, canceled, or executed includes the following.

- (1) When a Reporting Member Organization modifies or receives a modification to the terms of the order, the Reporting Member Organization shall record, in addition to all other applicable information items (including a new order identifier) that would apply as if the modified order were originated or received at the time of the modification:

- (A) the order identifier assigned to the order by the Reporting Member Organization prior to the modification,
 - (B) the date and time the modification was originated or received, and
 - (C) the date the order was first originated or received by the Reporting Member Organization,
- (2) When the Reporting Member Organization cancels or receives a cancellation of an order, in whole or part, the Reporting Member Organization shall record:
- (A) the order identifier assigned to the order by the Reporting Member Organization,
 - (B) the market participant symbol assigned by the Exchange to the Reporting Member Organization,
 - (C) the date the order was first originated or received by the Reporting Member Organization,
 - (D) the date and time the cancellation was originated or received,
 - (E) if the open balance of an order is canceled after a partial execution, the number of shares canceled, and
 - (F) whether the order was canceled on the instruction of a customer or the Reporting Member Organization.
- (3) When a Reporting Member Organization executes an order, in whole or in part, the Reporting Member Organization shall record:
- (A) the order identifier assigned to the order by the Reporting Member Organization,
 - (B) the market participant symbol assigned by the Exchange to the Reporting Member Organization,
 - (C) the date the order was first originated or received by the Reporting Member Organization,
 - (D) the Reporting Member Organization's number assigned for purposes of identifying transaction data in PSX, the Nasdaq Market Center, ADF, Trade Reporting Facility or other system or service as may be designated by the Exchange,
 - (E) the designation of the order as fully or partially executed,

- (F) the number of shares to which a partial execution applies and the number of unexecuted shares remaining,
- (G) the identification number of the terminal where the order was executed,
- (H) the date and time of execution;
- (I) the execution price,
- (J) the capacity in which the member organization executed the transaction (e.g., agency, principal or riskless principal), and
- (K) the national securities exchange or facility operated by a registered securities association where the trade was reported.

(e) Exchange member organizations shall assign and enter a unique order identifier, in the form prescribed by the Exchange, to all orders that are electronically transmitted to PSX. An order identifier shall not be required for orders that are manually transmitted.]

[Rule 3405. Order Data Transmission Requirements]

[(a) Securities Listed on NASDAQ.

Except as provided in paragraph (b), with respect to orders for securities listed on the NASDAQ Stock Market, Exchange member organizations and persons associated with a member organization shall comply with subsections (d), (e), and (f) of this Rule at all times.

(b) Proprietary Trading Firms.

Proprietary Trading Firms and their associated persons shall be required to comply with subsections (d), (e), and (f) of this Rule only when they receive a request from the Exchange to submit order information with respect to specific time periods identified in such request. Nothing in this Rule shall be construed to limit the obligations of Proprietary Trading Firms and their associated persons under any other Rule of the 3400 Series, including but not limited to, Rule 3404.

(c) Securities Listed on the Exchange.

With respect to orders for securities listed on the Exchange, Exchange member organizations and their associated persons shall be required to comply with subsections (d), (e), and (f) of this Rule for orders for securities listed on the Exchange only when they receive a request from the Exchange to submit order information with respect to specific time periods identified in such request. Nothing in this Rule shall be construed to limit the obligations of Exchange member organizations and their associated persons under any other Rule of the 3400 Series, including but not limited to, Rule 3404.

(d) General Requirement

All applicable order information required to be recorded under Rule 3404 shall be transmitted to FINRA's Order Audit Trail System by each Reporting Member Organization or by a Reporting Agent pursuant to an agreement described by paragraph (c) of this Rule.

(e) Method of Transmitting Data

- (1) Order information shall be transmitted in electronic form, as may be prescribed by the Exchange from time to time, to a receiving location designated by the Exchange.
- (2) Each Reporting Member Organization shall transmit to the Order Audit Trail System a report containing each applicable item of order information identified in Rule 3404(b), (c), and (d) whenever an order is originated, received, transmitted to another department within the member organization or to another broker or dealer that is a FINRA member or an Exchange member organization, modified, canceled, or executed. Each report shall be transmitted on the day such event occurred; provided, however, that if any item of information identified in Rule 3404(b), (c), and (d) is not available on such day, then the report shall be transmitted on the day that all such items of information become available. Order information reports may be aggregated into one or more transmissions, during such business hours as may be prescribed by the Exchange.

(f) Reporting Agent Agreements

- (1) Any Reporting Member Organization may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such Reporting Member Organization under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.
- (2) All written documents evidencing an agreement described in paragraph (1) shall be maintained by each party to the agreement.
- (3) Each Reporting Member Organization remains primarily responsible for compliance with the requirements of this Rule, notwithstanding the existence of an agreement described in this paragraph.]

[Rule 3406. Violation of Order Audit Trail System Rules]

[Failure of a member organization or person associated with a member organization to comply with any of the requirements of the Rule 3400 Series may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 707.]

[Rule 3407. Exemption to the Order Recording and Data Transmission Requirements]

[(a) The Exchange, for good cause shown after taking into consideration all relevant factors, may exempt subject to specified terms and conditions, a member organization from the recording and order data transmission requirements of Rules 3404 and 3405, respectively, for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member organization meets the following criteria:

- (1) the member organization and current control affiliates and associated persons of the member organization have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud;
- (2) the member organization has annual revenues of less than \$2 million;
- (3) the member organization does not conduct any market making activities in equity securities listed on the Exchange;
- (4) the member organization does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and
- (5) the member organization does not conduct clearing or carrying activities for other firms.

(b) An exemption provided pursuant to this Rule shall not exceed a period of two years. At or prior to the expiration of a grant of exemptive relief under this Rule, a member organization meeting the criteria set forth in paragraph (a) above may request a subsequent exemption, which will be considered at the time of the request consistent with the protection of investors and the public interest.

(c) This Rule shall be in effect until July 10, 2011.]

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OPTION FLOOR PROCEDURE ADVICES AND ORDER & DECORUM REGULATIONS

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C-2 Options Floor Broker Management System

Options Floor Broker Management System. In order to create an electronic audit trail for options orders represented by Floor Brokers on the Exchange's Options Floor, a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an

order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Broker Management System (as described in Rule 1080, Commentary .06). The [following] specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees and shall consist of the elements required by the Rule 900A Series (the "required information").: (i) the order type (i.e., customer, firm, broker-dealer, professional) and order receipt time; (ii) the option symbol; (iii) buy, sell, cross or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order as described in Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex or multi-leg order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position; and (viii) The Options Clearing Corporation ("OCC") clearing number of the broker-dealer that submitted the order (collectively, the "required information").] A Floor Broker must enter complete alpha/numeric identification assigned by the Exchange for all orders entered on behalf of Exchange Registered Option Traders. Any additional information with respect to the order shall be inputted into the Options Floor Broker Management System contemporaneously upon receipt, which may occur after the representation and execution of the order.

Pursuant to Rule 1000(f), Floor Brokers are not permitted to execute orders in the Exchange's options trading crowd (subject to certain exceptions). In the event of a malfunction in the Options Floor Broker Management System or in the event that the Exchange determines that Floor Brokers are permitted to execute orders in the Exchange's options trading crowd for a specific reason pursuant to Rule 1000(f)(iii), Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be time stamped upon the execution of such an order. Floor Brokers or their employees shall either enter the required information that is recorded on such trade tickets into the Exchange's electronic trading system or ensure that such information is entered for inclusion in the electronic audit trail.

Floor Brokers or their employees shall enter the required information (as described above) for FLEX options, or ensure that such information is entered, into the Exchange's electronic audit trail in the same electronic format as the required information for equity, equity index and U.S. dollar-settled foreign currency options. Floor Brokers or their employees shall enter the required information for FLEX options into the electronic audit trail on the same business day that a specific event surrounding the lifecycle of an order in FLEX options (including, without limitation, orders, price or size changes, execution or cancellation) occurs.

FBMS is also designed to execute two-sided orders entered by Floor Brokers, including multi-leg orders up to 15 legs, after representation in the trading crowd. When a Floor Broker submits an order for execution through FBMS, the order will be executed based on market conditions and in accordance with Exchange rules. FBMS execution functionality will assist the Floor Broker in clearing the Exchange book, consistent with Exchange priority rules. If the order cannot be executed, the System will attempt to

execute the order a number of times for a period of no more than one second, which period shall be established by the Exchange and announced by Options Trader Alert, after which it will be returned to the Floor Broker on the FBMS. The Floor Broker may resubmit the order for execution, as long as the quotes/orders that comprise the cross have not been withdrawn. Floor Brokers are responsible for handling all FBMS orders in accordance with Exchange priority and trade-through rules, including Rules 1014, 1033 and 1084.

FINE SCHEDULE (Implemented on a two-year running calendar basis)

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with Business Conduct Committee

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