

Required fields are shown with yellow backgrounds and asterisks.

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

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

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

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

**Description**

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

Proposal to amend the Exchange transaction fees at Section VIII (NASDAQ PSX Fees).

**Contact Information**

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

First Name \* Sean      Last Name \* Bennett

Title \* Principal Associate General Counsel

E-mail \* Sean.Bennett@nasdaq.com

Telephone \* (301) 978-8499      Fax

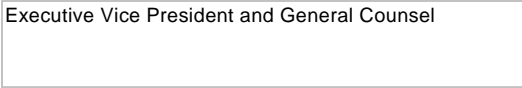
**Signature**

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

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

(Title \*)

Date 06/01/2017      Executive Vice President and General Counsel

By Edward S. Knight      

edward.knight@nasdaq.com

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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

**Exhibit 1 - Notice of Proposed Rule Change \***

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

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

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

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

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s transaction fees at Section VIII (NASDAQ PSX Fees) to: (i) assess a fee of \$0.0026 per share executed for any PSCN order (other than PSKP) that receives an execution on NASDAQ PSX (“PSX”) or is routed away from PSX and receives an execution at an away market; and (ii) reduce the qualification criteria required to be met in order to receive a credit for providing liquidity through the PSX.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on June 1, 2017.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange's transaction fees at Section VIII (NASDAQ PSX Fees) to: (i) assess a fee of \$0.0026 per share executed for any PSCN order (other than PSKP) that receives an execution on PSX or is routed away from PSX and receives an execution at an away market; and (ii) reduce the qualification criteria required to be met in order to receive a credit for providing liquidity through PSX.

First Change

The Exchange proposes to assess a charge of \$0.0026 per share executed for PSCN orders<sup>3</sup> that execute on PSX or that are routed to other venues and receive an execution thereon. PSCN is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table. If shares remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

Currently, under Section VIII(a)(1) the Exchange assesses fees ranging from \$0.0028 per share executed to \$0.0030 per share executed for an order that executes on PSX, including PSCN orders. Section VIII(a)(2) concerns fees for routing of orders in all

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<sup>3</sup> See Rule 3315(a)(1)(A)(iv).

securities. Under Section VIII(a)(2) the Exchange does not charge a member organization entering a PSTG<sup>4</sup> or PSCN order that executes at NASDAQ BX, and assesses a fee of \$0.0030 per share executed to a member organization entering such an order that executes at a venue other than PSX, to which the fee schedule under Section VIII(a)(1) would apply, or NASDAQ BX.

The Exchange is proposing to assess a member organization a fee of \$0.0026 per share executed for a PSCN order that receives an execution on PSX or that is routed away from PSX and receives an execution on another venue. PSCN is meant to attract users to PSX, and generally providing a discount to member organizations for PSCN executions will provide greater incentive to member organizations to use PSX as a venue. Specifically, the Exchange believes that assessing the lowered rate will encourage member organizations to interact with PSX liquidity, while also encouraging such participants to take advantage of the sophisticated routing functionality offered by PSX. Last, since PSCN does not re-route when it is locked or crossed by an away market, the Exchange believes that increased use of PSCN will also increase displayed liquidity on PSX.

The Exchange notes that member organizations will realize a fee increase for any PSCN order that is executed on NASDAQ BX. As noted above, currently such PSCN

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<sup>4</sup> PSTG is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table. If shares remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center. PSKN is a form of PSTG in which the entering firm instructs the System to bypass any market centers included in the PSTG System routing table that are not posting Protected Quotations within the meaning of Regulation NMS. See Rule 3315(a)(1)(A)(iii).

orders are not assessed a fee. In offering the lower fees for all other PSCN orders, the Exchange must increase the fee assessed for PSCN orders executed on NASDAQ BX to help cover, in part, the cost to the Exchange in offering the reduced fees for PSCN executions.

The Exchange notes that it is not including PSKP orders<sup>5</sup> in the proposed changes. PSKP orders are a form of PSCN in which the entering firm instructs the System to bypass any market centers included in the PSCN System routing table that are not posting Protected Quotations within the meaning of Regulation NMS. The Exchange is not including PSKP orders in the proposed change because the Exchange has only limited funds to apply to the proposed reduced PSCN fees. PSCN orders route to both venues with protected quotations and venues without protected quotations, which are often low-cost venues, based on the System routing table following the principal of best execution. By contrast, PSKP orders are routed only to venues with protected quotations, which typically assess the Exchange higher fees for execution thereon. Consequently, extending the proposed pricing to PSKP would result in significant cost to the Exchange in comparison to the proposed fee assessed for such executions. As such, the fees assessed for execution of PSKP orders will remain unchanged.

#### Second Change

The Exchange provides a credit of \$0.0031 per share executed for displayed quotes and orders entered by a member organization that provides and accesses 0.35% or more of Consolidated Volume during the month. Consolidated Volume is defined by Section VIII(a)(1) as “the total consolidated volume reported to all consolidated

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<sup>5</sup> See supra note 3.

transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot.”

Moreover, the rule states that for purposes of calculating Consolidated Volume and the extent of a member’s trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member’s trading activity.

To qualify for the \$0.0031 per share executed credit, a member organization must provide and access 0.35% or more of Consolidated Volume during the month. The Exchange is proposing to reduce the monthly percentage of Consolidated Volume provided and accessed from 0.35% to 0.30%, thereby making it easier to qualify for the credit.

b. Statutory Basis

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

First Change

The Exchange believes that the proposed reduced fees assessed for PSCN executions are reasonable because they remain consistent with the fees currently assessed

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

for executions on PSX and on other venues. As described above, these fees range from no charge to \$0.0030 per share executed.

The Exchange believes that the proposed reduced fees assessed for PSCN executions are an equitable allocation and are not unfairly discriminatory because the Exchange is using the reduced fees to provide incentive to member organizations to use PSCN orders, which, as discussed above, will in turn promote greater interaction with PSX liquidity, while also encouraging such member organizations to take advantage of the sophisticated routing functionality offered by PSX. Promoting interaction with PSX liquidity will benefit all market participants on PSX by deepening liquidity and price discovery on PSX. Last, encouraging member organizations to use the Exchange's routing functionality will help smaller firms that do not have the resources to build their own routing functionality. The Exchange believes that increasing the fee assessed for PSCN executions on NASDAQ BX is an equitable allocation and is not unfairly discriminatory because the Exchange has limited funds to apply toward both lower fees and credits. In this case, the Exchange is applying the same charge assessed for all other PSCN executions to such executions occurring on NASDAQ BX to help offset the cost to the Exchange in offering the reduced charge for all other PSCN executions. Similarly, the Exchange believes that excluding PSKP orders from the proposal is an equitable allocation and is not unfairly discriminatory because applying the reduced fees to PSKP orders would likely result in a significant cost to the Exchange. As noted, the Exchange has limited funds to apply toward both lower fees and credits. PSCN orders allow the Exchange to route to both venues with a protected quote and lower cost venues without a protected quotation. By contrast, PSKP orders must be routed to venues with a protected



quotation, which results in a higher overall cost to Exchange. Consequently, fees for PSKP orders will remain unchanged. For these reasons, the Exchange believes that the proposed amended criteria is an equitable allocation and is not unfairly discriminatory.

#### Second Change

The Exchange believes that the credit is reasonable because it is not changing. A \$0.0031 per share executed credit represents a significant incentive to market participants to improve their levels of Consolidated Volume on the Exchange. The Exchange is maintaining this significant incentive, but is also potentially broadening eligibility for the credit, as discussed below.

The Exchange believes that the credit is an equitable allocation and is not unfairly discriminatory because the proposed amendment will ease the qualification criteria, thereby potentially expanding the number of member organizations that may qualify for the credit. From time to time, the Exchange must assess the effectiveness of the incentives it provides to member organizations. In the present case, the Exchange has observed that the \$0.0031 per share executed credit has not provided adequate incentive to member organizations to provide the level of Consolidated Volume required by the qualification criteria. As a consequence, the Exchange is lowering the Consolidated Volume criteria in an effort to attract more member organizations to increase their levels of Consolidated Volume to reach the level required to receive the credit. The Exchange notes that the proposed criteria required to receive the credit will remain significantly higher than the next highest credit provided for displayed quotes and orders. Specifically, the Exchange provides a \$0.0029 per share executed credit for quotes and orders entered by a member organization that provides and accesses 0.25% or more of

Consolidated Volume during the month. For these reasons, the Exchange believes that the proposed amended criteria is an equitable allocation and is not unfairly discriminatory.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the Exchange is proposing to generally reduce the fee assessed for PSCN executions and to reduce the level of Consolidated Volume required to qualify for a credit available to all member organizations. The reduced fees for PSCN orders are designed to provide incentive to member organizations to use PSCN, which in turn should increase order interaction on PSX. The proposed change to the credit is also designed to improve the market by providing incentive to member organizations to increase their activity on PSX. Thus, the proposed changes are designed to improve market quality for all market participants on PSX. The Exchange has observed that the

current fee structure for PSCN order executions has not provided adequate incentive to member organizations to use PSCN. The Exchange believes that the proposed fee structure will provide such incentive. The Exchange has also observed that the credit has not provided adequate incentive to member organizations to increase their Consolidated Volume to meet the credit's qualification criteria. As a consequence, the Exchange is proposing to reduce the level of Consolidated Volume required to qualify for the credit, which should make the credit attainable by more member organizations while still requiring a high level of Consolidated Volume to receive the credit. Because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues, the proposed overall reduction in the fees assessed for PSCN order executions and the reduction in the qualification criteria of the credit should not impose a burden on competition.

Ultimately, the Exchange believes that the proposal is pro-competitive because, to the extent it is effective in improving market quality on PSX, other markets may be compelled to provide similar incentives to improve market quality on their markets. Thus, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets or impose any burden on competition, but may rather promote competition.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>8</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2017-44)

June \_\_, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Exchange's transaction fees at Section VIII (NASDAQ PSX Fees)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 1, 2017, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Exchange's transaction fees at Section VIII (NASDAQ PSX Fees) to: (i) assess a fee of \$0.0026 per share executed for any PSCN order (other than PSKP) that receives an execution on NASDAQ PSX ("PSX") or is routed away from PSX and receives an execution at an away market; and (ii) reduce the qualification criteria required to be met in order to receive a credit for providing liquidity through the PSX.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 purpose of the proposed rule change is to amend the Exchange's transaction fees at Section VIII (NASDAQ PSX Fees) to: (i) assess a fee of \$0.0026 per share executed for any PSCN order (other than PSKP) that receives an execution on PSX or is routed away from PSX and receives an execution at an away market; and (ii) reduce the qualification criteria required to be met in order to receive a credit for providing liquidity through PSX.

First Change

The Exchange proposes to assess a charge of \$0.0026 per share executed for PSCN orders<sup>3</sup> that execute on PSX or that are routed to other venues and receive an execution thereon. PSCN is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the

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<sup>3</sup> See Rule 3315(a)(1)(A)(iv).

System routing table. If shares remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

Currently, under Section VIII(a)(1) the Exchange assesses fees ranging from \$0.0028 per share executed to \$0.0030 per share executed for an order that executes on PSX, including PSCN orders. Section VIII(a)(2) concerns fees for routing of orders in all securities. Under Section VIII(a)(2) the Exchange does not charge a member organization entering a PSTG<sup>4</sup> or PSCN order that executes at NASDAQ BX, and assesses a fee of \$0.0030 per share executed to a member organization entering such an order that executes at a venue other than PSX, to which the fee schedule under Section VIII(a)(1) would apply, or NASDAQ BX.

The Exchange is proposing to assess a member organization a fee of \$0.0026 per share executed for a PSCN order that receives an execution on PSX or that is routed away from PSX and receives an execution on another venue. PSCN is meant to attract users to PSX, and generally providing a discount to member organizations for PSCN executions will provide greater incentive to member organizations to use PSX as a venue.

Specifically, the Exchange believes that assessing the lowered rate will encourage

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<sup>4</sup> PSTG is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table. If shares remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center. PSKN is a form of PSTG in which the entering firm instructs the System to bypass any market centers included in the PSTG System routing table that are not posting Protected Quotations within the meaning of Regulation NMS. See Rule 3315(a)(1)(A)(iii).

member organizations to interact with PSX liquidity, while also encouraging such participants to take advantage of the sophisticated routing functionality offered by PSX. Last, since PSCN does not re-route when it is locked or crossed by an away market, the Exchange believes that increased use of PSCN will also increase displayed liquidity on PSX.

The Exchange notes that member organizations will realize a fee increase for any PSCN order that is executed on NASDAQ BX. As noted above, currently such PSCN orders are not assessed a fee. In offering the lower fees for all other PSCN orders, the Exchange must increase the fee assessed for PSCN orders executed on NASDAQ BX to help cover, in part, the cost to the Exchange in offering the reduced fees for PSCN executions.

The Exchange notes that it is not including PSKP orders<sup>5</sup> in the proposed changes. PSKP orders are a form of PSCN in which the entering firm instructs the System to bypass any market centers included in the PSCN System routing table that are not posting Protected Quotations within the meaning of Regulation NMS. The Exchange is not including PSKP orders in the proposed change because the Exchange has only limited funds to apply to the proposed reduced PSCN fees. PSCN orders route to both venues with protected quotations and venues without protected quotations, which are often low-cost venues, based on the System routing table following the principal of best execution. By contrast, PSKP orders are routed only to venues with protected quotations, which typically assess the Exchange higher fees for execution thereon. Consequently, extending the proposed pricing to PSKP would result in significant cost to the Exchange

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<sup>5</sup> See supra note 3.



in comparison to the proposed fee assessed for such executions. As such, the fees assessed for execution of PSKP orders will remain unchanged.

### Second Change

The Exchange provides a credit of \$0.0031 per share executed for displayed quotes and orders entered by a member organization that provides and accesses 0.35% or more of Consolidated Volume during the month. Consolidated Volume is defined by Section VIII(a)(1) as “the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot.” Moreover, the rule states that for purposes of calculating Consolidated Volume and the extent of a member’s trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member’s trading activity.

To qualify for the \$0.0031 per share executed credit, a member organization must provide and access 0.35% or more of Consolidated Volume during the month. The Exchange is proposing to reduce the monthly percentage of Consolidated Volume provided and accessed from 0.35% to 0.30%, thereby making it easier to qualify for the credit.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> in

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

#### First Change

The Exchange believes that the proposed reduced fees assessed for PSCN executions are reasonable because they remain consistent with the fees currently assessed for executions on PSX and on other venues. As described above, these fees range from no charge to \$0.0030 per share executed.

The Exchange believes that the proposed reduced fees assessed for PSCN executions are an equitable allocation and are not unfairly discriminatory because the Exchange is using the reduced fees to provide incentive to member organizations to use PSCN orders, which, as discussed above, will in turn promote greater interaction with PSX liquidity, while also encouraging such member organizations to take advantage of the sophisticated routing functionality offered by PSX. Promoting interaction with PSX liquidity will benefit all market participants on PSX by deepening liquidity and price discovery on PSX. Last, encouraging member organizations to use the Exchange's routing functionality will help smaller firms that do not have the resources to build their own routing functionality. The Exchange believes that increasing the fee assessed for PSCN executions on NASDAQ BX is an equitable allocation and is not unfairly discriminatory because the Exchange has limited funds to apply toward both lower fees and credits. In this case, the Exchange is applying the same charge assessed for all other PSCN executions to such executions occurring on NASDAQ BX to help offset the cost to the Exchange in offering the reduced charge for all other PSCN executions. Similarly,

the Exchange believes that excluding PSKP orders from the proposal is an equitable allocation and is not unfairly discriminatory because applying the reduced fees to PSKP orders would likely result in a significant cost to the Exchange. As noted, the Exchange has limited funds to apply toward both lower fees and credits. PSCN orders allow the Exchange to route to both venues with a protected quote and lower cost venues without a protected quotation. By contrast, PSKP orders must be routed to venues with a protected quotation, which results in a higher overall cost to Exchange. Consequently, fees for PSKP orders will remain unchanged. For these reasons, the Exchange believes that the proposed amended criteria is an equitable allocation and is not unfairly discriminatory.

#### Second Change

The Exchange believes that the credit is reasonable because it is not changing. A \$0.0031 per share executed credit represents a significant incentive to market participants to improve their levels of Consolidated Volume on the Exchange. The Exchange is maintaining this significant incentive, but is also potentially broadening eligibility for the credit, as discussed below.

The Exchange believes that the credit is an equitable allocation and is not unfairly discriminatory because the proposed amendment will ease the qualification criteria, thereby potentially expanding the number of member organizations that may qualify for the credit. From time to time, the Exchange must assess the effectiveness of the incentives it provides to member organizations. In the present case, the Exchange has observed that the \$0.0031 per share executed credit has not provided adequate incentive to member organizations to provide the level of Consolidated Volume required by the qualification criteria. As a consequence, the Exchange is lowering the Consolidated

Volume criteria in an effort to attract more member organizations to increase their levels of Consolidated Volume to reach the level required to receive the credit. The Exchange notes that the proposed criteria required to receive the credit will remain significantly higher than the next highest credit provided for displayed quotes and orders.

Specifically, the Exchange provides a \$0.0029 per share executed credit for quotes and orders entered by a member organization that provides and accesses 0.25% or more of Consolidated Volume during the month. For these reasons, the Exchange believes that the proposed amended criteria is an equitable allocation and is not unfairly discriminatory.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the Exchange is proposing to generally reduce the fee assessed for PSCN executions and to reduce the level of Consolidated Volume required to qualify

for a credit available to all member organizations. The reduced fees for PSCN orders are designed to provide incentive to member organizations to use PSCN, which in turn should increase order interaction on PSX. The proposed change to the credit is also designed to improve the market by providing incentive to member organizations to increase their activity on PSX. Thus, the proposed changes are designed to improve market quality for all market participants on PSX. The Exchange has observed that the current fee structure for PSCN order executions has not provided adequate incentive to member organizations to use PSCN. The Exchange believes that the proposed fee structure will provide such incentive. The Exchange has also observed that the credit has not provided adequate incentive to member organizations to increase their Consolidated Volume to meet the credit's qualification criteria. As a consequence, the Exchange is proposing to reduce the level of Consolidated Volume required to qualify for the credit, which should make the credit attainable by more member organizations while still requiring a high level of Consolidated Volume to receive the credit. Because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues, the proposed overall reduction in the fees assessed for PSCN order executions and the reduction in the qualification criteria of the credit should not impose a burden on competition. Ultimately, the Exchange believes that the proposal is pro-competitive because, to the extent it is effective in improving market quality on PSX, other markets may be compelled to provide similar incentives to improve market quality on their markets. Thus, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in

the financial markets or impose any burden on competition, but may rather promote competition.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>8</sup>

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form

(<http://www.sec.gov/rules/sro.shtml>); or

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2017-44 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-2017-44. 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-2017-44 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.<sup>9</sup>

Robert W. Errett  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).



**EXHIBIT 5**

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

**NASDAQ PHLX Rules**

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**NASDAQ PHLX LLC PRICING SCHEDULE**

**THE EXCHANGE CALCULATES FEES ON A TRADE DATE BASIS.**

**POLICY FOR AMENDING BILLING INFORMATION: CORRECTIONS SUBMITTED AFTER TRADE DATE AND PRIOR TO THE ISSUANCE OF AN INVOICE BY THE EXCHANGE MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ONLY MEMBERS MAY SUBMIT TRADE CORRECTIONS.**

**ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. THE EXCHANGE CALCULATES FEES ON A TRADE DATE BASIS. ONLY MEMBERS MAY SUBMIT BILLING DISPUTES.**

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**VIII. NASDAQ PSX FEES**

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**Order Execution and Routing**

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

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

reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

Charge to member organization entering order that executes in NASDAQ PSX:	<u>\$0.0026 per share executed for a PSCN order (other than a PSKP order)</u>
	\$0.0029 per share executed in Nasdaq-Listed Securities entered by a member organization that accesses 0.065% or more of Consolidated Volume during the month
	\$0.0028 per share executed in NYSE-Listed Securities entered by a member organization that accesses 0.065% or more of Consolidated Volume during the month
	\$0.0028 per share executed in Securities Listed on Exchanges other than Nasdaq and NYSE entered by a member organization that accesses 0.065% or more of Consolidated Volume during the month
	\$0.0030 per share executed for all other member organizations
Credit to member organization providing liquidity through the NASDAQ PSX System:	
Displayed Quote/Order:	\$0.0031 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.3[5]% or more of Consolidated Volume during the month
	\$0.0029 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.25% or more of Consolidated Volume during the month
	\$0.0027 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.15% or more of Consolidated Volume

during the month

\$0.0027 per share executed for Quotes/Orders entered in Securities Listed on Exchanges other than Nasdaq or NYSE by a member organization that (1) provides a minimum of 1 million shares a day on average in Securities Listed on Exchanges other than Nasdaq or NYSE and (2) doubles the daily average share volume provided in Securities Listed on Exchanges other than Nasdaq or NYSE during the month versus the member organization's daily average share volume provided in Securities Listed on Exchanges other than Nasdaq or NYSE in February 2017. If a member had no activity in February 2017 in Securities Listed on Exchanges other than Nasdaq or NYSE or became a member after February 2017, its February 2017 daily average share volume in Securities Listed on Exchanges other than Nasdaq or NYSE would be zero for purposes of determining that member's eligibility for the credit in subsequent months.

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

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

\* \* \* \* \*

## (2) Fees for Routing of Orders in All Securities

Charge to member organization entering PSTG or <u>PSKP</u> [PSCN] order that executes in a venue other than the NASDAQ PSX System:	\$0.0030 per share executed at NYSE
	\$0.0000 per share executed at NASDAQ BX
	\$0.0030 per share executed in other venues

Charge to member organization entering PSCN order (other than a PSKP order) that executes in a venue other than the NASDAQ PSX System: \$0.0026 per share executed

\* \* \* \* \*

(b) No change.

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