

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="24"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2017"/> - * <input type="text" value="77"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by **NASDAQ PHLX LLC**  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

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

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

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

Proposal to amend and conform Sections VIII and Section XIII of the Exchange Pricing Schedule, to define key terms; to clarify the rule language; and to clarify its application to Extranet Providers, Members, and Non-members in various contexts.

**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 \***

Add Remove View

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

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

Add Remove View

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

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

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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 and conform Sections VIII and Section XIII of the Exchange’s Pricing Schedule, to define key terms; to clarify the rule language; and to clarify its application to Extranet Providers, Members, and Non-members in various contexts.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on September 19, 2017. 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:

Jeffrey S. Davis  
Deputy General Counsel  
Nasdaq, Inc.  
301-978-8484

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

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

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

a. Purpose

The proposed rule change concerns Section VIII of the Exchange's Fee Schedule (the "Equities Rule") and Section XIII, of the Exchange's Fee Schedule (the "Options Rule," collectively the "Rules"), currently entitled "Extranet Access Fee." The Exchange first imposed an Extranet Access Fee in January of 2015.<sup>3</sup> Today, technology and the ecosystem have changed such that the Rules need updating and clarification. Therefore, the Exchange is proposing several parallel changes to the Rules.

First, the Exchange is proposing to rename both Rules and to clarify their meaning through the use of defined terms. The Exchange is adding definitions of the terms Equipment Configuration, and Extranet Provider to new subsection (a) of the Rules. The Exchange is also cross-referencing the definition of Distributors currently set forth in Section IX of the Exchange Pricing Schedule.

The term "Equipment Configuration" will be defined to mean "any line, circuit, router package, or other technical configuration used to provide a connection to the Exchange market data feeds." The term Equipment Configuration replaces the term "Customer Premises Equipment Configuration" set forth in the current rules. The Exchange believes that the term "Customer Premises Equipment Configuration" is ambiguous and creates confusion about the ownership and location of equipment through which direct access to market data feeds is provided. By referring instead to "Equipment Configuration," the Exchange intends to specify that the ownership and location of the

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<sup>3</sup> See Securities Exchange Act Release No. 74022 (Jan. 9, 2015); 80 F.R. 2157 (Jan. 15, 2015) (SR-Phlx-2015-04).

equipment is inconsequential to the application of access and redistribution fees. Rather, it is the number of configurations that matters, determining the number of monthly access and redistribution fees to be assessed.

For example, if an Extranet Provider supplies market data to five recipients via five configurations, two of which are located in a single Exchange facility (such as Carteret, New Jersey) and three of which are located at different customer facilities, the Extranet Provider will be assessed access and redistribution fees of \$5,000 per month. If an Extranet Provider supplies market data to one customer at two separate locations via two configurations – one within a Exchange facility and one located elsewhere – the Extranet Provider will be assessed access and redistribution fees of \$2,000 per month. If an Extranet Provider supplies market data to four customers via four configurations all located within an Exchange co-location facility, the Extranet Provider will be assessed \$4,000 per month in access and redistribution fees. The Exchange is proposing to define the term “Extranet Provider” as “any entity that has signed the Exchange Extranet Connection Agreement and that establishes a telecommunications connection in the Exchange’s co-location facility.” The Exchange requires entities to sign the Exchange Extranet Connection Agreement<sup>4</sup> for the purpose of setting the terms and conditions for those entities to place equipment in the Exchange’s co-location facility in order to establish a telecommunications connection directly to the Exchange and to provide its own customers with access to the Exchange market data feeds.

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<sup>4</sup> Available at <http://www.nasdaqtrader.com/Content/AdministrationSupport/AgreementsData/NASDAQOMXExtranetAgreement.pdf>.

Finally, in order to further enhance the clarity of the Exchange's rules, the Exchange is proposing to cross-reference the definition of "Distributor" for purposes of this rule. Section IX of the Exchange Pricing Schedule currently defines Distributor as:

[A]ny entity that receives a feed or data file of NASDAQ PHLX data directly from NASDAQ PHLX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors shall execute a NASDAQ PHLX distributor agreement.

The Exchange is proposing to renumber and rearrange the existing rule text of the Rules. The first two sentences of existing rule text will become new subsection (b). The Exchange also proposes to improve the clarity of subsection (b) by using the new definitions outlined above and by specifying that the monthly fees referred to are the monthly access and redistribution fees. As described earlier, the third sentence of existing rule text is being modified and moved to paragraph (1) of new subsection (a) as the improved definition of "Equipment Configuration." The fourth and fifth sentences of existing rule text will move to new subsection (d) with modest textual improvements but no change in application of fees. The sixth sentence of existing rule text will move to the final sentences of subsections (b) and (c) with minor textual enhancements to apply it with equal effect to Extranet Providers and Distributors.

Lastly, the Exchange proposes to add new subsection (c) to specify and codify that similarly situated Distributors and Extranet Providers will pay similar fees. Under subsection (b), Extranet Providers are assessed a monthly fee of \$1,000 for each Equipment Configuration that offers Exchange market data feeds. Similarly, under proposed subsection (c), the same \$1,000 monthly fee applies to Distributors to whom the same Exchange market data feeds are published via a Direct Circuit Connection to the Exchange. The Exchange believes that, as defined, Extranet Providers and Distributors

are similarly situated because both entities connect directly to the Exchange, and both provide Exchange market data feeds to their customers via those connections. Likewise, the customers of Extranet Providers and Distributors are similarly situated in that they receive the same Exchange market data feeds through similar means.

For example, a Distributor with two Direct Circuit Connections to the Exchange, both of which are located in a single the Exchange co-location facility (such as Carteret, New Jersey) and receive Exchange market data feeds, will be assessed access and redistribution fees of \$2,000 per month. A Distributor with two Direct Circuit Connections to the Exchange at two separate locations and that receives Exchange market data feeds over each connection, will be assessed access and redistribution fees of \$2,000 per month. A Distributor with two Direct Circuit Connections to the Exchange at two separate locations and that receives Exchange market data feeds over only one of the connections, will be assessed access and redistribution fees of \$1,000 per month.

The Exchange previously assessed and currently assesses this fee in its capacity as operator of Nasdaq Technology Services, which had been considered an Extranet Provider.<sup>5</sup> The Exchange believes that defining Extranet Providers and codifying the fee to Distributors (other than Extranet Providers) is clearer to market participants. The Exchange also understands that Extranet Providers commonly pass the fee on to their customers and therefore specifying that Customers employing a Direct Circuit Connection also pay the fee will ensure consistent treatment between users enjoying the same benefits, as described above.

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<sup>5</sup> See SR-Phlx-2015-04 at footnote 16.

b. Statutory Basis

The Exchange believes that this 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 an equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facility, and to specify that the fees are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the application of identical Access and Redistribution fees to Distributors and Extranet Providers as described in the proposed rule change is fair and equitable and non-discriminatory. As stated above, Distributors and Extranet Providers both connect to the Exchange directly for the purpose of re-distributing Exchange market data feeds to their own customers and both enjoy similar benefits in doing so. Likewise, those customers, whether receiving Exchange market data feeds via a Distributor or an Extranet Provider receive that market data feeds in a similar fashion and with similar benefits. Those benefits are considerable: secure, rapid, reliable access to the highest quality market data feeds on the trading of equities and options on the Exchange.

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

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

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



determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>8</sup>

The Exchange believes it is fair and equitable and not discriminatory to apply equal access and redistribution fees to Distributors, as it does to Extranet Providers. As stated above, Distributors and Extranet Providers are similarly situated in that they receive Exchange market data feeds directly from the Exchange and they redistribute that data to their own customers. Likewise, the Exchange believes that the customers of Extranet Providers and of Distributors are similarly situated in the manner in which they receive Exchange market data feeds.

The Exchange is proposing to enhance the clarity of the language of the Rules to ensure that customers understand the proper application of the Rules as technology has changed and continues to change. The Exchange believes that customers support the continued evolution of its rules, and that regulators do and should support and facilitate this evolution.

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

The Exchange believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that applying equal fees to similarly situated Extranet Providers and Distributors, enhancing the clarity of the Rules, and eliminating ambiguity imposes no burden on competition and is, in fact, pro-competitive. Extranet Providers and Distributors benefit from having a more accurate and complete understanding of the

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<sup>8</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Exchange's services and fees when determining which if any of those competing services to purchase voluntarily.

The Exchange believes that the proposed rule change places no burden on competition because it specifies that identical fees will apply to all similarly situated Distributors and Extranet Providers that provide Exchange market data feeds to their own customers. As described above, Distributors and Extranet Providers offer the same Exchange market data feeds in the same manner to similarly situated customers. The Exchange offers similar benefits to Distributors and Extranet Providers by offering them such access to Exchange market data feeds.

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

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)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>9</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.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2017-77)

October \_\_, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Access and Redistribution Fee

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 October 2, 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 and conform Sections VIII and Section XIII of the Exchange’s Pricing Schedule, to define key terms; to clarify the rule language; and to clarify its application to Extranet Providers, Members, and Non-members in various contexts.

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.

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

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

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

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

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

1. Purpose

The proposed rule change concerns Section VIII of the Exchange's Fee Schedule (the "Equities Rule") and Section XIII, of the Exchange's Fee Schedule (the "Options Rule," collectively the "Rules"), currently entitled "Extranet Access Fee." The Exchange first imposed an Extranet Access Fee in January of 2015.<sup>3</sup> Today, technology and the ecosystem have changed such that the Rules need updating and clarification. Therefore, the Exchange is proposing several parallel changes to the Rules.

First, the Exchange is proposing to rename both Rules and to clarify their meaning through the use of defined terms. The Exchange is adding definitions of the terms Equipment Configuration, and Extranet Provider to new subsection (a) of the Rules. The Exchange is also cross-referencing the definition of Distributors currently set forth in Section IX of the Exchange Pricing Schedule.

The term "Equipment Configuration" will be defined to mean "any line, circuit, router package, or other technical configuration used to provide a connection to the

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<sup>3</sup> See Securities Exchange Act Release No. 74022 (Jan. 9, 2015); 80 F.R. 2157 (Jan. 15, 2015) (SR-Phlx-2015-004).

Exchange market data feeds.” The term Equipment Configuration replaces the term “Customer Premises Equipment Configuration” set forth in the current rules. The Exchange believes that the term “Customer Premises Equipment Configuration” is ambiguous and creates confusion about the ownership and location of equipment through which direct access to market data feeds is provided. By referring instead to “Equipment Configuration,” the Exchange intends to specify that the ownership and location of the equipment is inconsequential to the application of access and redistribution fees. Rather, it is the number of configurations that matters, determining the number of monthly access and redistribution fees to be assessed.

For example, if an Extranet Provider supplies market data to five recipients via five configurations, two of which are located in a single Exchange facility (such as Carteret, New Jersey) and three of which are located at different customer facilities, the Extranet Provider will be assessed access and redistribution fees of \$5,000 per month. If an Extranet Provider supplies market data to one customer at two separate locations via two configurations – one within a Exchange facility and one located elsewhere – the Extranet Provider will be assessed access and redistribution fees of \$2,000 per month. If an Extranet Provider supplies market data to four customers via four configurations all located within an Exchange co-location facility, the Extranet Provider will be assessed \$4,000 per month in access and redistribution fees. The Exchange is proposing to define the term “Extranet Provider” as “any entity that has signed the Exchange Extranet Connection Agreement and that establishes a telecommunications connection in the Exchange’s co-location facility.” The Exchange requires entities to sign the Exchange

Extranet Connection Agreement<sup>4</sup> for the purpose of setting the terms and conditions for those entities to place equipment in the Exchange's co-location facility in order to establish a telecommunications connection directly to the Exchange and to provide its own customers with access to the Exchange market data feeds.

Finally, in order to further enhance the clarity of the Exchange's rules, the Exchange is proposing to cross-reference the definition of "Distributor" for purposes of this rule. Section IX of the Exchange Pricing Schedule currently defines Distributor as:

[A]ny entity that receives a feed or data file of NASDAQ PHLX data directly from NASDAQ PHLX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors shall execute a NASDAQ PHLX distributor agreement.

The Exchange is proposing to renumber and rearrange the existing rule text of the Rules. The first two sentences of existing rule text will become new subsection (b). The Exchange also proposes to improve the clarity of subsection (b) by using the new definitions outlined above and by specifying that the monthly fees referred to are the monthly access and redistribution fees. As described earlier, the third sentence of existing rule text is being modified and moved to paragraph (1) of new subsection (a) as the improved definition of "Equipment Configuration." The fourth and fifth sentences of existing rule text will move to new subsection (d) with modest textual improvements but no change in application of fees. The sixth sentence of existing rule text will move to the final sentences of subsections (b) and (c) with minor textual enhancements to apply it with equal effect to Extranet Providers and Distributors.

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<sup>4</sup> Available at <http://www.nasdaqtrader.com/Content/AdministrationSupport/AgreementsData/NASDAQOMXExtranetAgreement.pdf>.

Lastly, the Exchange proposes to add new subsection (c) to specify and codify that similarly situated Distributors and Extranet Providers will pay similar fees. Under subsection (b), Extranet Providers are assessed a monthly fee of \$1,000 for each Equipment Configuration that offers Exchange market data feeds. Similarly, under proposed subsection (c), the same \$1,000 monthly fee applies to Distributors to whom the same Exchange market data feeds are published via a Direct Circuit Connection to the Exchange. The Exchange believes that, as defined, Extranet Providers and Distributors are similarly situated because both entities connect directly to the Exchange, and both provide Exchange market data feeds to their customers via those connections. Likewise, the customers of Extranet Providers and Distributors are similarly situated in that they receive the same Exchange market data feeds through similar means.

For example, a Distributor with two Direct Circuit Connections to the Exchange, both of which are located in a single the Exchange co-location facility (such as Carteret, New Jersey) and receive Exchange market data feeds, will be assessed access and redistribution fees of \$2,000 per month. A Distributor with two Direct Circuit Connections to the Exchange at two separate locations and that receives Exchange market data feeds over each connection, will be assessed access and redistribution fees of \$2,000 per month. A Distributor with two Direct Circuit Connections to the Exchange at two separate locations and that receives Exchange market data feeds over only one of the connections, will be assessed access and redistribution fees of \$1,000 per month.

The Exchange previously assessed and currently assesses this fee in its capacity as operator of Nasdaq Technology Services, which had been considered an Extranet



Provider.<sup>5</sup> The Exchange believes that defining Extranet Providers and codifying the fee to Distributors (other than Extranet Providers) is clearer to market participants. The Exchange also understands that Extranet Providers commonly pass the fee on to their customers and therefore specifying that Customers employing a Direct Circuit Connection also pay the fee will ensure consistent treatment between users enjoying the same benefits, as described above.

## 2. Statutory Basis

The Exchange believes that this 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 an equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facility, and to specify that the fees are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the application of identical Access and Redistribution fees to Distributors and Extranet Providers as described in the proposed rule change is fair and equitable and non-discriminatory. As stated above, Distributors and Extranet Providers both connect to the Exchange directly for the purpose of re-distributing Exchange market data feeds to their own customers and both enjoy similar benefits in doing so. Likewise, those customers, whether receiving Exchange market data feeds via a Distributor or an Extranet Provider receive that market data feeds in a similar fashion

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<sup>5</sup> See SR-Phlx-2015-04 at footnote 16.

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

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

and with similar benefits. Those benefits are considerable: secure, rapid, reliable access to the highest quality market data feeds on the trading of equities and options on the Exchange.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>8</sup>

The Exchange believes it is fair and equitable and not discriminatory to apply equal access and redistribution fees to Distributors, as it does to Extranet Providers. As stated above, Distributors and Extranet Providers are similarly situated in that they receive Exchange market data feeds directly from the Exchange and they redistribute that data to their own customers. Likewise, the Exchange believes that the customers of Extranet Providers and of Distributors are similarly situated in the manner in which they receive Exchange market data feeds.

The Exchange is proposing to enhance the clarity of the language of the Rules to ensure that customers understand the proper application of the Rules as technology has changed and continues to change. The Exchange believes that customers support the continued evolution of its rules, and that regulators do and should support and facilitate this evolution.

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<sup>8</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

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

The Exchange believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that applying equal fees to similarly situated Extranet Providers and Distributors, enhancing the clarity of the Rules, and eliminating ambiguity imposes no burden on competition and is, in fact, pro-competitive. Extranet Providers and Distributors benefit from having a more accurate and complete understanding of the Exchange's services and fees when determining which if any of those competing services to purchase voluntarily.

The Exchange believes that the proposed rule change places no burden on competition because it specifies that identical fees will apply to all similarly situated Distributors and Extranet Providers that provide Exchange market data feeds to their own customers. As described above, Distributors and Extranet Providers offer the same Exchange market data feeds in the same manner to similarly situated customers. The Exchange offers similar benefits to Distributors and Extranet Providers by offering them such access to Exchange market data feeds.

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>9</sup>

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2017-77 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-Phlx-2017-77. 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-2017-77 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>10</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**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.**

\* \* \* \* \*

**Section VIII. NASDAQ PSX Fees**

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**[Extranet ]Access and Redistribution Fee**

(a) Definitions: For purposes of this Section VIII:

(1) The term "Equipment Configuration" shall mean any line, circuit, router package, or other technical configuration used to provide a connection to the Exchange market data feeds.

(2) The term "Extranet Provider" shall mean any entity that has signed the Nasdaq Extranet Connection Agreement and that establishes a telecommunications connection in the Exchange's co-location facility.

(3) The term "Distributor" shall have the meaning set forth in Section IX of the Exchange Pricing Schedule.

(b) Extranet [p]Providers that establish a connection with the Exchange to offer direct access connectivity to market data feeds shall be assessed a monthly access and redistribution fee of \$1,000 per [recipient Customer Premises ]Equipment [("CPE")

]Configuration. If an [e]Extranet [p]Provider uses multiple [CPE]Equipment Configurations to provide market data feeds to [any ]recipients, the [monthly]access and redistribution fee shall apply to each such [CPE]Equipment Configuration. Extranet Providers that use the same Equipment Configuration for the receipt of equities and options Exchange market data feeds will be assessed a single fee for that Equipment Configuration.

[For purposes of this rule, the term "Customer Premises Equipment Configuration" shall mean any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to Exchange market data feeds to a recipient's site. No extranet access fee will be charged for connectivity to market data feeds containing only consolidated data. For purposes of this rule, consolidated data includes data disseminated by the UTP SIP.

Extranet providers that establish a connection with PSX pursuant to Section VIII of the Pricing Schedule as well as a connection with Phlx pursuant to Section XIII of the Fee Schedule, shall be assessed a total monthly access fee of \$1,000 per recipient CPE Configuration.]

(c) Distributors (other than Extranet Providers) that utilize a Direct Circuit Connection to the Exchange pursuant to Section XI of the Pricing Schedule to receive Exchange market data feeds shall be assessed a monthly access and redistribution fee of \$1,000 per Direct Circuit Connection. If a Distributor (other than an Extranet Provider) uses multiple Direct Circuit Connections to receive market data feeds, the monthly fee shall apply to each. Distributors that use the same Direct Circuit Connection for the receipt of equities and options Exchange market data feeds will be assessed a single fee for that Direct Circuit Connection.

(d) The access and redistribution fees set forth above will not be charged for connectivity to market data feeds containing only consolidated data. For purposes of this rule, consolidated data includes data disseminated by the Securities Information Processor for the Consolidated Tape Association Plan.

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### **Sec. XIII [Extranet ]Access and Redistribution Fee**

(a) Definitions: For purposes of this rule:

(1) The term "Equipment Configuration" shall mean any line, circuit, router package, or other technical configuration used to provide a connection to the Exchange market data feeds.

(2) The term "Extranet Provider" shall mean any entity that has signed the Nasdaq Extranet Connection Agreement and that establishes a telecommunications connection in the Exchange's co-location facility.

(3) The term "Distributor" shall have the meaning set forth in Section IX OPR the Exchange Pricing Schedule.

(b) Extranet [p]Providers that establish a connection with the Exchange[Phlx] to offer direct access connectivity to market data feeds shall be assessed a monthly access and redistribution fee of \$1,000 per [recipient Customer Premises ]Equipment [("CPE") ]Configuration. If an [e]Extranet [p]Provider uses multiple [CPE]Equipment Configurations to provide market data feeds to [any ]recipients, the [monthly]access and redistribution fee shall apply to each such [CPE]Equipment Configuration.

[For purposes of this Section XIII, the term "Customer Premises Equipment Configuration" shall mean any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to Exchange market data feeds to a recipient's site. No extranet access fee will be charged for connectivity to market data feeds containing only consolidated data.]

(c) Distributors (other than Extranet Providers) that utilize a Direct Circuit Connection to PHLX pursuant to Section XI of the Pricing Schedule to receive Exchange market data feeds shall be assessed a monthly access and redistribution fee of \$1,000 per Direct Circuit Connection. If a Distributor (other than an Extranet Provider) uses multiple Direct Circuit Connections to receive market data feeds, the monthly fee shall apply to each. Distributors that use the same Direct Circuit Connection for the receipt of equities and options Exchange market data feeds will be assessed a single fee for that Direct Circuit Connection.

[Extranet providers that establish a connection with Phlx pursuant to this Section XIII of the Pricing Schedule as well as a connection with PSX pursuant to Section VIII of the Pricing Schedule shall be assessed a total monthly access fee of \$1,000 per recipient CPE Configuration.]

(d) The access and redistribution fees set forth above will not be charged for connectivity to market data feeds containing only consolidated data. For purposes of this rule, consolidated data is data disseminated by the Securities Information Processor for the Options Price Regulatory Authority.

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