

Required fields are shown with yellow backgrounds and asterisks.

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

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	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"/>
--	--

Description
 Provide a brief description of the action (limit 250 characters, required when Initial is checked *).
 Proposed Rule Change to Amend Rules 1000, 1064, and 1069 to Allow for the Snapshot Functionality of the Floor Based Management System to be Used for All Orders

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 * Brett Last Name * Kitt
 Title * Senior Associate General Counsel
 E-mail * brett.kitt@nasdaq.com
 Telephone * (301) 978-8132 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 09/11/2018 Executive Vice President and General Counsel
 By Edward S. Knight
 (Name *)
 edward.knight@nasdaq.com

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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 *

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, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

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

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

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

Add Remove View

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

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) Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² Nasdaq PHLX, LLC (“Phlx” or “Exchange”) proposes to amend Exchange Rules 1000, 1064, and 1069 to allow for the Snapshot functionality of the Floor Based Management System (“FBMS”) to be used for all orders.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved the submission of this proposed rule change on September 4, 2018. No other action by the Exchange is necessary for the filing of the rule change.

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

Brett Kitt
Senior Associate General Counsel
Nasdaq, Inc.
301-978-8132

¹ 15 U.S.C. 78s(b)(1)

² 17 CFR 240.19b-4.

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

a. Purpose

On October 30, 2017, the Commission approved the Exchange's proposal to establish the "Snapshot" functionality within the Floor Broker Management System (now known as the "Floor Based Management System" or "FBMS").³ On July 17, 2018, the Commission approved another Exchange proposal to expand the availability of Snapshot to Registered Options Traders ("ROTs") and Specialists.⁴

As set forth in Rule 1069, Snapshot allows a Floor Broker, ROT, or Specialist, at the time when they "provisionally execute"⁵ a trade in the trading crowd, to capture and record the market conditions that prevailed at the time of the provisional execution.⁶

³ Securities Exchange Act Release No. 34-81980 (Oct. 30, 2017), 82 FR 51313 (Nov. 3, 2017) (the "Snapshot Approval Order"). As described in Exchange Rule 1063, FBMS is the electronic system that enables Floor participants to submit option orders represented or negotiated on the Exchange trading floor (the "Floor") to the Exchange's Trading System for execution and reporting to the consolidated tape. FBMS also facilitates the creation of an electronic audit trail for such orders.

⁴ Securities Exchange Act Release No. 34-83656 (July 17, 2018), 83 FR 34899 (July 23, 2018).

⁵ A "provisional execution" occurs in the trading crowd when either (i) the participants to a trade reach a verbal agreement in the trading crowd as to the terms of the trade, or (ii) a Floor Broker announces a cross in accordance with Phlx Rule 1064(a). See Rule 1069(a)(i)(A).

⁶ Snapshot records the time when a participant triggers the functionality and the prevailing market conditions for an options class or series, which includes all information required to determine compliance with priority and trade through requirements, including the Away Best Bid and Offer, the Exchange Best Bid and Offer, customer orders at the top of the Exchange book, and the best bid and offer of all-or-none orders. See Rule 1069(a). The market conditions captured by Snapshot are derived from the same real-time market information that exists in the Trading System.

Once a participant triggers a Snapshot by pressing a button on FBMS, the participant has up to 30 seconds to use the information captured by the Snapshot for purposes of entering the terms of the provisionally-executed trade into FBMS and submitting the trade to the Trading System. After 30 seconds, a Snapshot expires and can no longer be used to capture the market that existed at the time when it was taken. When a trade that is subject to a valid Snapshot is submitted to the Trading System, the trade will execute only to the extent that it is consistent with applicable priority and trade-through rules based upon the prevailing market at the time of the Snapshot. The Trading System will reject a trade subject to a Snapshot if it would violate trade-through or priority rules. Whenever a Snapshot becomes invalid due to expiration, rejection by the Trading System, or cancellation in anticipation of expiration or rejection, a participant may take a new Snapshot that reflects the market prevailing at the time the new Snapshot is taken, provided that the participant first re-announces the trade to the trading crowd and reaches a new agreement as to the terms of the trade.

Snapshot exists to provide Floor participants with a means of mitigating risks that are inherent in a Floor-based options trading environment. In particular, Snapshot mitigates the risk that market conditions will shift between the time when participants consummate trades on the Floor in open outcry and the time when they enter such trades into FBMS and submit them to the Trading System for execution. This risk exists because, even with the advent of FBMS, which is the Exchange's electronic Floor order entry system, a Floor participant still must manually enter the terms of a trade into FBMS prior to submission to the Trading System. This manual process can take several seconds or more to complete, depending upon the complexity of the trade. The Exchange notes

that this manual process is not required when trading in an all-electronic environment, such that Snapshot also serves the purpose of rendering Floor trading venues more competitive with electronic venues.

When the Exchange developed Snapshot, it made certain design choices, in coordination with the Commission, to mitigate the risk that Snapshot could be subject to overuse or abuse. For example, the Exchange limited the time period during which a Snapshot remains valid to 30 seconds. Moreover, once a Snapshot expires, a participant may take a new Snapshot only after it re-announces the trade to the trading crowd and reaches a new agreement regarding its terms. Additionally, a member may have only one Snapshot outstanding across all option classes and series at a time. The Exchange also prohibits participants from triggering Snapshot to obtain favorable priority or trade-through conditions or to improperly avoid unfavorable priority or trade-through conditions, and it surveils the market for proper use of Snapshot, both on a post-trade and a real-time basis.⁷

Finally, the Exchange agreed to mitigate the risk of Snapshot overuse by limiting its applicability only to multi-leg orders and simple orders involving options on exchange traded funds (“ETFs”) that are included in the Options Penny Pilot. The Exchange agreed to limit Snapshot to these two categories of orders because they presented the most immediately compelling use cases for Snapshot. As the Commission noted in its Approval Order, these types of orders were at “heightened risk of failing to execute when

⁷ Conduct that would constitute a violation includes repeated instances in which participants permit valid Snapshots to expire without submitting associated trades to the Trading System for verification and reporting to the Consolidated Tape, as well as repeated instances in which a participant waits longer than is reasonably necessary to submit a trade subject to a Snapshot to the Trading System for execution.

market conditions change between the time when Floor Brokers and participants in the crowd agree upon the terms of the trade and the time when the Trading System receives the trade for verification and execution.”⁸

Snapshot became available for use by Floor Brokers on December 4, 2017 and it recently became available to ROTs and Specialists. Since the Exchange first introduced Snapshot, it has monitored when Snapshot has been used and the frequency of such uses. Such monitoring reveals that concerns regarding the prospective misuse and abuse of Snapshot were greatly overstated. In fact, Snapshot was utilized only 24 times (21 times in executed trades, 3 times in rejected trades) over the course of eight months (December 2017-July 2018). In four of these eight months, it was not used at all. In the other four months in which Snapshot was used, it was used (successfully or otherwise) only once more than 10 times in a month and otherwise, no more than six times in a month.

The Exchange believes that due to the stringent limitations on Snapshot the Exchange Floor is still at a competitive disadvantage as compared to other floor trading venues where trade through and priority rules are less rigorously enforced. Snapshot systematically enforces Exchange priority and trade through rules and the limitations on issues and order types in which Snapshot can be used negate the intended purpose for which Snapshot was originally designed.

To improve the competitive position of the Exchange Floor relative to other venues, the Exchange now proposes to broaden the applicability of Snapshot to all orders. The Exchange believes that this proposal will make Snapshot simpler, more consistent, and useful in more circumstances than it is now. Moreover, the Exchange believes that

⁸ Snapshot Approval Order, supra, at 51315.

its experience with Snapshot demonstrates that it can accommodate this proposal without materially raising the risk that Snapshot will be overused or abused. The existing design controls that mitigate such risks will continue to apply, and if Surveillance – which will continue monitor Snapshot usage closely – detects a significant uptick in improper usage, then the Exchange will evaluate whether additional controls are appropriate.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

Snapshot promotes just and equitable principles of trade and serves the interests of investors and the public by increasing the likelihood that investors will be able to execute their orders and do so in line with their expectations and needs. Similarly, Snapshot mitigates the risk that the Trading System will unfairly reject a trade due to a change in market conditions that occurs between the time when the parties negotiate a lawful and valid trade on the Floor and the time when the Trading System receives it. The proposal to expand the applicability of Snapshot to all orders will broaden the scope of such protections.

The expansion of Snapshot to all orders will also help Snapshot to better achieve its intended purpose of rendering the Exchange Floor more competitive with other trading

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

venues at which the Exchange observes trade executions occurring seconds or even minutes after verifications occur, but on trading terms that existed as of the time of verification.

The Exchange believes that it is consistent with the Act to broaden the applicability of Snapshot to all option orders traded on the Exchange Floor. Although multi-leg orders and simple orders in options on Options Penny Pilot ETFs were perhaps the most immediately compelling use cases for Snapshot, they are by no means the only use cases for the functionality. Indeed, all options orders that are negotiated on the Exchange Floor are subject to the same risk of market movement, to varying extents, from the time of their negotiation in open outcry to the time of their submission to the Trading System. For all of these orders, Snapshot will help to mitigate this risk. Enabling Floor participants to provisionally execute all categories of options on the Floor (using Snapshot when needed), rather than execute them in the Trading System, will not adversely impact investors or the quality of the market due to the controls that the Exchange proposes on the circumstances in which participants may use Snapshot. In fact, the proposal will protect investors and the public interest by improving participants' ability to execute orders negotiated on the Floor while continuing to ensure that all priority and trade through rules are systematically enforced.

Moreover, this proposal is consistent with Rule 611 of Regulation NMS,¹¹ which requires the Exchange to establish policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations. Presently, the Exchange verifies that a proposed trade complies with the trade-through and priority rules as of the time when the

¹¹ 12 CFR 242.611.

Trading System receives the trade from FBMS; if the trade complies, then the Trading System executes the trade and reports it to the consolidated tape. However, the proposal would serve as an exception to this practice. It would permit participants, upon reaching a meeting of the minds in the trading crowd regarding the terms of a trade, to take a Snapshot that provisionally executes the trade on the Floor. When the participant submits the trade to the Trading System using Snapshot, the Trading System will verify that the provisionally executed trade complied with the trade-through and priority rules as of the time of its execution – i.e., the time when the crowd agreed to the terms of the trade and Snapshot was taken – rather than at the time when the Trading System receives the trade. If the Trading System determines that the provisionally executed trade complied with the trade-through and priority rules, then it will report the trade to the Consolidated Tape. If, however, the Trading System determines that the provisionally executed trade was non-compliant with the trade-through and priority rules as of the time when the Snapshot was taken, then it will reject the trade. In other words, even though the proposal will change the time of execution of a trade for purposes of verifying compliance with the trade-through and priority rules, the automated compliance verification process will otherwise be unchanged and will still apply to systematically prevent any violation of the trade-through and priority rules for all trades, including those utilizing Snapshot.

Finally, the Exchange's proposal accomplishes the above in a manner that: (1) continues to provide automated and verifiable enforcement of applicable trade-through and priority rules; (2) is documented in writing and transparent; (3) provides for trade reporting to occur in a timely fashion, even for the most complex trades, and within a 30 second time frame that is far less than the maximum 90 second reporting period

allowable; and (4) imposes surveillance and responsible limitations upon Snapshot that ensure appropriate usage and prevents violations and abuse.

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 fact, the proposal is pro-competitive for several reasons. The Exchange believes that the Snapshot feature will result in the Exchange's Floor operating more efficiently, which will help it compete with other floor-based exchanges.

Moreover, the proposal helps the Exchange compete by ensuring the robustness of its regulatory program, ensuring participants' compliance with that program, and by enhancing Customer protections through further utilization of electronic tools by members. The Exchange considers all of these things to be differentiators in attracting participants and order flow.

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)

Not applicable.

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. Exhibit 1, Notice of proposed rule for publication in the Federal Register.
2. Exhibit 5, Proposed rule text.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2018-59)

September __, 2018

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change to Amend Rules 1000, 1064, and 1069 to Allow for the Snapshot Functionality of the Floor Based Management System to be Used for All Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on September 11, 2018, 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 Exchange Rules 1000, 1064, and 1069 to allow for the Snapshot functionality of the Floor Based Management System (“FBMS”) to be used for all orders.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

On October 30, 2017, the Commission approved the Exchange’s proposal to establish the “Snapshot” functionality within the Floor Broker Management System (now known as the “Floor Based Management System” or “FBMS”).³ On July 17, 2018, the Commission approved another Exchange proposal to expand the availability of Snapshot to Registered Options Traders (“ROTs”) and Specialists.⁴

As set forth in Rule 1069, Snapshot allows a Floor Broker, ROT, or Specialist, at the time when they “provisionally execute”⁵ a trade in the trading crowd, to capture and

³ Securities Exchange Act Release No. 34-81980 (Oct. 30, 2017), 82 FR 51313 (Nov. 3, 2017) (the “Snapshot Approval Order”). As described in Exchange Rule 1063, FBMS is the electronic system that enables Floor participants to submit option orders represented or negotiated on the Exchange trading floor (the “Floor”) to the Exchange’s Trading System for execution and reporting to the consolidated tape. FBMS also facilitates the creation of an electronic audit trail for such orders.

⁴ Securities Exchange Act Release No. 34-83656 (July 17, 2018), 83 FR 34899 (July 23, 2018).

⁵ A “provisional execution” occurs in the trading crowd when either (i) the participants to a trade reach a verbal agreement in the trading crowd as to the terms of the trade, or (ii) a Floor Broker announces a cross in accordance with Phlx Rule 1064(a). See Rule 1069(a)(i)(A).

record the market conditions that prevailed at the time of the provisional execution.⁶

Once a participant triggers a Snapshot by pressing a button on FBMS, the participant has up to 30 seconds to use the information captured by the Snapshot for purposes of entering the terms of the provisionally-executed trade into FBMS and submitting the trade to the Trading System. After 30 seconds, a Snapshot expires and can no longer be used to capture the market that existed at the time when it was taken. When a trade that is subject to a valid Snapshot is submitted to the Trading System, the trade will execute only to the extent that it is consistent with applicable priority and trade-through rules based upon the prevailing market at the time of the Snapshot. The Trading System will reject a trade subject to a Snapshot if it would violate trade-through or priority rules. Whenever a Snapshot becomes invalid due to expiration, rejection by the Trading System, or cancellation in anticipation of expiration or rejection, a participant may take a new Snapshot that reflects the market prevailing at the time the new Snapshot is taken, provided that the participant first re-announces the trade to the trading crowd and reaches a new agreement as to the terms of the trade.

Snapshot exists to provide Floor participants with a means of mitigating risks that are inherent in a Floor-based options trading environment. In particular, Snapshot mitigates the risk that market conditions will shift between the time when participants consummate trades on the Floor in open outcry and the time when they enter such trades

⁶ Snapshot records the time when a participant triggers the functionality and the prevailing market conditions for an options class or series, which includes all information required to determine compliance with priority and trade through requirements, including the Away Best Bid and Offer, the Exchange Best Bid and Offer, customer orders at the top of the Exchange book, and the best bid and offer of all-or-none orders. See Rule 1069(a). The market conditions captured by Snapshot are derived from the same real-time market information that exists in the Trading System.

into FBMS and submit them to the Trading System for execution. This risk exists because, even with the advent of FBMS, which is the Exchange's electronic Floor order entry system, a Floor participant still must manually enter the terms of a trade into FBMS prior to submission to the Trading System. This manual process can take several seconds or more to complete, depending upon the complexity of the trade. The Exchange notes that this manual process is not required when trading in an all-electronic environment, such that Snapshot also serves the purpose of rendering Floor trading venues more competitive with electronic venues.

When the Exchange developed Snapshot, it made certain design choices, in coordination with the Commission, to mitigate the risk that Snapshot could be subject to overuse or abuse. For example, the Exchange limited the time period during which a Snapshot remains valid to 30 seconds. Moreover, once a Snapshot expires, a participant may take a new Snapshot only after it re-announces the trade to the trading crowd and reaches a new agreement regarding its terms. Additionally, a member may have only one Snapshot outstanding across all option classes and series at a time. The Exchange also prohibits participants from triggering Snapshot to obtain favorable priority or trade-through conditions or to improperly avoid unfavorable priority or trade-through conditions, and it surveils the market for proper use of Snapshot, both on a post-trade and a real-time basis.⁷

⁷ Conduct that would constitute a violation includes repeated instances in which participants permit valid Snapshots to expire without submitting associated trades to the Trading System for verification and reporting to the Consolidated Tape, as well as repeated instances in which a participant waits longer than is reasonably necessary to submit a trade subject to a Snapshot to the Trading System for execution.

Finally, the Exchange agreed to mitigate the risk of Snapshot overuse by limiting its applicability only to multi-leg orders and simple orders involving options on exchange traded funds (“ETFs”) that are included in the Options Penny Pilot. The Exchange agreed to limit Snapshot to these two categories of orders because they presented the most immediately compelling use cases for Snapshot. As the Commission noted in its Approval Order, these types of orders were at “heightened risk of failing to execute when market conditions change between the time when Floor Brokers and participants in the crowd agree upon the terms of the trade and the time when the Trading System receives the trade for verification and execution.”⁸

Snapshot became available for use by Floor Brokers on December 4, 2017 and it recently became available to ROTs and Specialists. Since the Exchange first introduced Snapshot, it has monitored when Snapshot has been used and the frequency of such uses. Such monitoring reveals that concerns regarding the prospective misuse and abuse of Snapshot were greatly overstated. In fact, Snapshot was utilized only 24 times (21 times in executed trades, 3 times in rejected trades) over the course of eight months (December 2017-July 2018). In four of these eight months, it was not used at all. In the other four months in which Snapshot was used, it was used (successfully or otherwise) only once more than 10 times in a month and otherwise, no more than six times in a month.

The Exchange believes that due to the stringent limitations on Snapshot the Exchange Floor is still at a competitive disadvantage as compared to other floor trading venues where trade through and priority rules are less rigorously enforced. Snapshot systematically enforces Exchange priority and trade through rules and the limitations on

⁸ Snapshot Approval Order, supra, at 51315.

issues and order types in which Snapshot can be used negate the intended purpose for which Snapshot was originally designed.

To improve the competitive position of the Exchange Floor relative to other venues, the Exchange now proposes to broaden the applicability of Snapshot to all orders. The Exchange believes that this proposal will make Snapshot simpler, more consistent, and useful in more circumstances than it is now. Moreover, the Exchange believes that its experience with Snapshot demonstrates that it can accommodate this proposal without materially raising the risk that Snapshot will be overused or abused. The existing design controls that mitigate such risks will continue to apply, and if Surveillance – which will continue monitor Snapshot usage closely – detects a significant uptick in improper usage, then the Exchange will evaluate whether additional controls are appropriate.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

Snapshot promotes just and equitable principles of trade and serves the interests of investors and the public by increasing the likelihood that investors will be able to execute their orders and do so in line with their expectations and needs. Similarly, Snapshot mitigates the risk that the Trading System will unfairly reject a trade due to a

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

change in market conditions that occurs between the time when the parties negotiate a lawful and valid trade on the Floor and the time when the Trading System receives it. The proposal to expand the applicability of Snapshot to all orders will broaden the scope of such protections.

The expansion of Snapshot to all orders will also help Snapshot to better achieve its intended purpose of rendering the Exchange Floor more competitive with other trading venues at which the Exchange observes trade executions occurring seconds or even minutes after verifications occur, but on trading terms that existed as of the time of verification.

The Exchange believes that it is consistent with the Act to broaden the applicability of Snapshot to all option orders traded on the Exchange Floor. Although multi-leg orders and simple orders in options on Options Penny Pilot ETFs were perhaps the most immediately compelling use cases for Snapshot, they are by no means the only use cases for the functionality. Indeed, all options orders that are negotiated on the Exchange Floor are subject to the same risk of market movement, to varying extents, from the time of their negotiation in open outcry to the time of their submission to the Trading System. For all of these orders, Snapshot will help to mitigate this risk. Enabling Floor participants to provisionally execute all categories of options on the Floor (using Snapshot when needed), rather than execute them in the Trading System, will not adversely impact investors or the quality of the market due to the controls that the Exchange proposes on the circumstances in which participants may use Snapshot. In fact, the proposal will protect investors and the public interest by improving participants'

ability to execute orders negotiated on the Floor while continuing to ensure that all priority and trade through rules are systematically enforced.

Moreover, this proposal is consistent with Rule 611 of Regulation NMS,¹¹ which requires the Exchange to establish policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations. Presently, the Exchange verifies that a proposed trade complies with the trade-through and priority rules as of the time when the Trading System receives the trade from FBMS; if the trade complies, then the Trading System executes the trade and reports it to the consolidated tape. However, the proposal would serve as an exception to this practice. It would permit participants, upon reaching a meeting of the minds in the trading crowd regarding the terms of a trade, to take a Snapshot that provisionally executes the trade on the Floor. When the participant submits the trade to the Trading System using Snapshot, the Trading System will verify that the provisionally executed trade complied with the trade-through and priority rules as of the time of its execution – i.e., the time when the crowd agreed to the terms of the trade and Snapshot was taken – rather than at the time when the Trading System receives the trade. If the Trading System determines that the provisionally executed trade complied with the trade-through and priority rules, then it will report the trade to the Consolidated Tape. If, however, the Trading System determines that the provisionally executed trade was non-compliant with the trade-through and priority rules as of the time when the Snapshot was taken, then it will reject the trade. In other words, even though the proposal will change the time of execution of a trade for purposes of verifying compliance with the trade-through and priority rules, the automated compliance verification process will otherwise

¹¹ 12 CFR 242.611.

be unchanged and will still apply to systematically prevent any violation of the trade-through and priority rules for all trades, including those utilizing Snapshot.

Finally, the Exchange's proposal accomplishes the above in a manner that: (1) continues to provide automated and verifiable enforcement of applicable trade-through and priority rules; (2) is documented in writing and transparent; (3) provides for trade reporting to occur in a timely fashion, even for the most complex trades, and within a 30 second time frame that is far less than the maximum 90 second reporting period allowable; and (4) imposes surveillance and responsible limitations upon Snapshot that ensure appropriate usage and prevents violations and abuse.

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 fact, the proposal is pro-competitive for several reasons. The Exchange believes that the Snapshot feature will result in the Exchange's Floor operating more efficiently, which will help it compete with other floor-based exchanges.

Moreover, the proposal helps the Exchange compete by ensuring the robustness of its regulatory program, ensuring participants' compliance with that program, and by enhancing Customer protections through further utilization of electronic tools by members. The Exchange considers all of these things to be differentiators in attracting participants and order flow.

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

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2018-59 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-2018-59. 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-2018-59 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.¹²

Eduardo A. Aleman
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq PHLX Rules

* * * * *

Rule 1000. Applicability, Definitions and References

(a) – (e) No change.

(f) All Exchange options transactions shall be executed in one of the following ways:

(i) automatically by the Exchange Trading System pursuant to Rule 1080 and other applicable options rules; or

(ii) through the Options Floor Based Management System. Members authorized to operate on the floor are not permitted to execute orders in the Exchange's options trading crowd, except as follows:

(A) – (D) No change

(E) As set forth in Rule 1069, members may use the Snapshot feature of the Options Floor Based Management System to provisionally execute[,]orders in the options trading crowd[, multi-leg orders (as defined in Rule 1066(f)) and simple orders in options on ETFs that are included in the Options Penny Pilot].

Surveillance staff must approve all executions submitted under this Rule 1000(f)(ii)(A)-(D) to validate that each abides by applicable priority and trade through rules. Under subsection (f)(ii)(D), the rounding of prices may be used only where necessary to execute the trade at the MPV, and only to the benefit of a customer order or, where multiple customers' orders are involved, for the customer order that is earliest in time. If no customer order is involved, rounding of prices is available to the non-customer order that is earliest in time.

(g) No change.

Public Outcry - Pursuant to Rule 110, bids and offers must be made in an audible tone of voice. A member shall be considered "in" on a bid or offer, while he remains at the post, unless he shall distinctly and audibly say "out." A member bidding and offering in immediate and rapid succession shall be deemed "in" until he shall say "out" on either bid or offer. Once the trading crowd has provided a quote, it will remain in effect until: (A) a reasonable amount of time has passed, or (B) there is a significant change in the price of the underlying security, or (C) the market given in response to the request has been improved. In the case of a dispute, the term "significant change" will be interpreted on a case-by-case basis by an Options Exchange Official based upon the extent of the recent

trading in the option and, in the case of equity and index options, in the underlying security, and any other relevant factors.

With respect to using the Options Floor Based Management System to execute an order pursuant to Rule 1000(f), a member must audibly say "out" before the order is submitted into the FBMS for execution and, if the order is not executed, the member must audibly say "out" before each time the member resubmits the order for execution.

[The Exchange anticipates that it will implement the Snapshot feature referenced herein and described further in Rule 1063(e) during the Fourth Quarter of 2017. The Exchange will notify members via an Options Trader Alert, to be posted on the Exchange's website, at least seven calendar days prior to the date when Snapshot will be available for use.]

* * * * *

Rule 1064. Crossing, Facilitation and Solicited Orders

(a) *Crossing*. Except as provided in paragraph (e) below, an Options Floor Broker who holds orders to buy and sell the same option series may cross such orders, provided that he proceeds in the following manner:

(i) – (ii) No change.

(iii) If such higher bid or lower offer is not taken, he may cross the orders at such higher bid or lower offer by announcing by public outcry that he is crossing and giving the quantity and price. All such orders are not deemed executed until entered into and executed through the Options Floor Based Management System ("FBMS"), except for where there is a provisional execution using the Snapshot feature of FBMS (as described in Rule 1069)[to cross multi-leg orders (as defined in Rule 1066(f)) or simple orders in options on ETFs that are included in the Options Penny Pilot; bids and offers can be withdrawn pursuant to Rule 1000(g)].

(iv) No change.

(b) – (e) No change.

••• **Commentary:** -----

No change.

[The Exchange anticipates that it will implement the Snapshot feature referenced herein and described further in Rule 1063(e) during the Fourth Quarter of 2017. The Exchange will notify members via an Options Trader Alert, to be posted on the Exchange's website, at least seven calendar days prior to the date when Snapshot will be available for use.]

* * * * *

Rule 1069. Snapshot Feature

(a) The Snapshot feature of FBMS records the market prevailing at the time the Snapshot is triggered. It records all information required to determine compliance with priority and trade-through requirements, including the following: (1) Away Best Bid and Offer; (2) the Exchange Best Bid and Offer; (3) customer orders at the top of the Exchange book; and (4) the best bid and offer of all-or-none orders.

(i) Availability.

(A) A member is permitted to trigger the Snapshot feature only at the time he or she provisionally executes a trade in the trading crowd[involving a multi-leg order (as defined in Rule 1066(f)) or a simple order in an option on an ETF that is included in the Options Penny Pilot]. For purposes of this provision, provisional execution occurs when either: (1) the participants to a trade reach a verbal agreement in the trading crowd as to the terms of the trade; or (2) a member announces that he is crossing an order in accordance with Rule 1064(a).

(B) A member is prohibited from triggering the Snapshot feature for the purpose of obtaining favorable priority or trade-through conditions or avoiding unfavorable priority or trade-through conditions.

(C) A member may have only one Snapshot outstanding across all options classes and series at a given time.

(D) Surveillance Staff will monitor and enforce proper usage of the Snapshot feature on a post-trade basis.

(ii) Snapshot Timer. After triggering the Snapshot feature, the member will have no more than 30 seconds to submit the provisionally executed trade along with the Snapshot into the System. The Snapshot will automatically become unavailable and expire if the member fails to submit a provisionally executed trade along with the Snapshot within 30 seconds after triggering the Snapshot.

(iii) Verification. After the member submits the provisionally executed trade along with the Snapshot, the System then determines whether the terms of the provisionally executed trade submitted by the member is consistent with applicable priority and trade-through rules based on the market prevailing at the time of the Snapshot.

(A) If the provisionally executed trade submitted with the Snapshot is consistent with the applicable priority and trade-through rules based on the market prevailing at the time of the Snapshot, the System will report the trade to the Consolidated Tape.

- (B) If the provisionally executed trade is not consistent with the applicable priority and trade-through rules based on the market prevailing at the time of the Snapshot, the System will reject the trade.
- (C) If an order exists on the Exchange's limit order book that has priority at the time when a member seeks to take a Snapshot, the System will not prevent the member from taking a Snapshot, but the member must clear the order on the book, re-announce and provisionally re-execute the trade, and take a new Snapshot before submitting the provisionally executed trade to the System or else the System will reject the trade upon submission.

(iv) Taking a New Snapshot

- (A) A member may take a new Snapshot and trigger a new 30-second timer provided that the member first re-announces and provisionally re-executes the trade in the crowd, as described in paragraphs (i) through (iii) above, if: (1) the Snapshot expired before the member submitted a provisional execution to the Trading System; (2) the Trading System rejected a provisional execution that is subject to a Snapshot; or (3) the member affirmatively canceled a Snapshot or permitted it to expire in anticipation of the Trading System rejecting the provisional execution that is subject to it.

* * * * *