

Required fields are shown with yellow backgrounds and asterisks.

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

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

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

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

Description

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

A proposal to amend the Rule 3400 Series concerning the Order Audit Trail System to make conforming and technical changes.

Contact Information

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

First Name * Sean	Last Name * Bennett
Title * Principal Associate General Counsel	
E-mail * Sean.Bennett@nasdaq.com	
Telephone * (301) 978-8499	Fax

Signature

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

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

(Title *)

Date 10/25/2018	Global Chief Legal and Policy Officer
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 EFFS website.

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Nasdaq PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Rule 3400 Series concerning the Order Audit Trail System to make conforming and technical changes.

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:

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The Exchange is proposing to amend the Rule 3400 Series concerning the Order Audit Trail System to: (1) renumber the Rule 3400 Series to conform it to the numbering convention used by the Nasdaq Stock Market LLC ("Nasdaq") and FINRA; (2) amend Rule 7410A to expand two existing exemptions and to make technical changes to text under the rule; (3) incorporate by reference FINRA Rules 7430, 7440 and 7450 in Rules 7430A, 7440A and 7450A, respectively, and make conforming changes thereto; and (4) delete Rule 3407.³

The Exchange's Rule 3400 Series imposes an obligation on Exchange members to record in electronic form and report to FINRA on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in Nasdaq- and Exchange-listed stocks. FINRA's Order Audit Trail System ("OATS") captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes, and transactions. This information is used by FINRA staff to conduct surveillance and investigations of members for potential violation of Exchange rules and federal securities laws.

The Exchange adopted the Rule 3400 Series to copy Nasdaq and FINRA OATS rules, where appropriate. As a general principle, the Exchange endeavors to keep its rules that are corresponding to FINRA rules as closely worded and structured as possible

³ The Exchange is filing a request for an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for certain rules included in this proposal, and will implement the changes proposed herein upon approval of the exemption request.

to the FINRA rules on which they are based, including FINRA's OATS rules under the FINRA Rule 7000 Series. In certain instances, the Exchange has not copied a FINRA OATS rule because it is not relevant. For example, the Exchange has not copied FINRA Rule 7410(o)(2), which concerns an exception to the definition of a Reporting Member relating to members operating on equities floors, because the Exchange does not operate an equities floor. Generally, the Exchange also seeks to keep the Rule 3400 Series consistent with Nasdaq's Rule 7400A Series, the substance of which is identical to the related rules of the Exchange. The proposed changes will harmonize Exchange rules with analogous Nasdaq and FINRA rules, which have changed since the Exchange first adopted its rules.

First Change

The Exchange is proposing to renumber the Rule 3400 Series to a new Rule 7000A Series, which is identical to how Nasdaq presents its OATS rules. The Exchange does not currently have a Rule 7000A Series and the Exchange is proposing to follow the numbering convention used by FINRA and NASDAQ. As part of this change, the Exchange is also updating cross references in the Rule 7000A Series.

Second Change

The Exchange is amending renumbered Rule 7410A to make several changes to conform it to the rules of Nasdaq. The Exchange is proposing to add new text noting that the terms under the rule have the same meaning as those defined in the Exchange's By-Laws and rules, unless otherwise noted, which is identical to Nasdaq's Rule 7410A(a). The Exchange is also amending Rule 7410A to make technical changes that harmonize

the definitions of “Index Arbitrage Trade,” “Program Trade,” and “Proprietary Trading Firm” with the definitions of those terms in the Nasdaq rules.⁴

The Exchange is also proposing to adopt the same limited exemption from OATS order data recordation requirements for Exchange members that are registered market makers in standardized options on any market. Renumbered Rule 7410A(j) defines the term “Order” as any oral, written, or electronic instruction to effect a transaction in an equity security listed on the Exchange or Nasdaq that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member’s market making activities in an Exchange-listed equity security. The Exchange is proposing to adopt the limited exemption currently available under Nasdaq’s analogous definition of “Order,”⁵ which excludes from the definition a bona fide hedge transaction involving a Nasdaq-listed equity security originated by a trading desk in the ordinary course of the member’s options market making activities.⁶ As noted by Nasdaq in adopting the exemption, OATS was designed to provide an accurate, time-sequenced

⁴ The Exchange is not adopting the definition of “NMS Stock” found under Nasdaq Rule 7410A(j). The term is not used in the Exchange’s OATS rules. In addition, the term is not used in the Nasdaq OATS rules. The term is used in FINRA Rule 7410(k) defining “Order Audit Trail System, whereas the Exchange and Nasdaq instead reference Exchange and Nasdaq listed securities under Exchange renumbered Rule 7410A(k) and Nasdaq listed securities under Nasdaq Rule 7410A(l).

⁵ See Nasdaq Rule 7410A(k).

⁶ The Exchange notes that Nasdaq capitalizes the term “Bona Fide Hedge Transaction” in Nasdaq Rule 7410A(k), although the term is not defined in Nasdaq’s rules. The Exchange believes that capitalizing the term was an error and is therefore not capitalizing the term in Rule 7410A(j).

record of orders and transactions, beginning with the receipt of an equity order at the first point of contact between the broker-dealer and the customer or counterparty and further documenting the life of the equity order through the process of execution.⁷ The proposed rule change does not impact the customer protection orientation of OATS since, by definition, bona fide hedging transactions in equity securities that are undertaken by options market makers do not involve customer orders in those equity securities. Rather, bona fide hedging transactions in equity securities are undertaken by an options market maker to hedge against the firm risk that it creates through its conduct as a registered options market maker. Accordingly, bona fide hedge transactions do not implicate customer protection issues, and requiring reporting of such transactions would not provide a regulatory benefit. It is also very expensive for firms that are not currently FINRA members or that do not currently trade Exchange or Nasdaq equities to develop and maintain the compliance systems and compliance staff required to continuously monitor the daily transmission of OATS data. For these reasons, the Exchange is proposing to adopt such an exemption, available to its options market makers.

The Exchange is proposing to amend Rule 7410A(n)(1) to harmonize the rule with FINRA Rule 7410(o)(1)(A) and Nasdaq Rule 7410A(o)(1)(A). Rule 7410A(n) provides the definition of “Reporting Member Organization,” which means a member organization that receives or originates an order and has an obligation to record and report information under renumbered Rules 7440A and 7450A. The Rule also provides an exception to the general definition if the member organization meets four conditions. The first condition in subparagraph (n)(1), which is the only condition at issue in this

⁷ See Securities Exchange Act Release No. 59369 (February 6, 2009), 74 FR 7278 (February 13, 2009) (SR-NASDAQ-2008-097).

proposal, is that currently the member organization engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member Organization. On May 12, 2014, FINRA amended FINRA Rule 7410(o)(1)(A) to allow a member to satisfy this condition by permitting a member to alternatively route its orders to two receiving Reporting Members, if two related requirements were met.⁸ First, the orders must be routed by the member to each receiving Reporting Member on a pre-determined schedule approved by FINRA. Second, the orders must be routed by the member to two receiving Reporting Members pursuant to the schedule for a time period not to exceed one year. FINRA noted in adopting the change that the rule was intended to accommodate introducing firms that transition to a different clearing firm over time and, during the transition, route their orders two different clearing firms, both of which report the introducing firm's information to OATS during the transition time. Nasdaq recently amended its rule to incorporate this change.⁹ The Exchange believes that this additional limited exception is appropriate for its member organizations, which likewise may encounter a transition to a clearing firm whereby they would no longer be eligible for the exception to the definition of Reporting Member Organization. Accordingly, the Exchange is proposing to adopt the FINRA rule text under renumbered Rule 7410A(n)(1)(B).

⁸ See Securities Exchange Act Release No. 72191 (May 20, 2014), 79 FR 30219 (May 27, 2014) (SR-FINRA-2014-024).

⁹ See Securities Exchange Act Release No. 83115 (April 26, 2018), 83 FR 19384 (May 2, 2018) (SR-NASDAQ-2018-030).

Third Change

The Exchange is proposing to incorporate by reference FINRA Rules 7430, 7440 and 7450 in Rules 7430A, 7440A and 7450A, respectively, and make conforming changes thereto.¹⁰ Current Rule 3403 concerns synchronization of Member Organization business clocks and is substantially identical to FINRA Rule 4590(a). Nasdaq Rule 7430A requires Nasdaq members to comply with FINRA Rule 4590 as if such rule were part of Nasdaq's rules and provides that references to "the FINRA By-Laws or other FINRA rules" shall be construed as references to "the Nasdaq Rules," for purposes of Nasdaq Rule 7430A. The Exchange is proposing to conform its rule text to that of Nasdaq.¹¹

With respect to Rule 7440A, the Exchange is proposing to copy Nasdaq Rule 7440A and incorporate by reference FINRA Rule 7440. Current Rule 3404 is meant to copy FINRA Rule 7440; however, FINRA amended FINRA Rule 7440 subsequent to the Exchange adopting Rule 3404 and the Exchange did not update its rule to reflect these changes. Specifically, FINRA amended Rules 7440(a)(2),¹² (a)(4),¹³ (b)(9),¹⁴ (b)(19),¹⁵

¹⁰ The Exchange is proposing to add text to Rules 7440A and 7450A, which notes that Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange, and also notes that members are complying with Rules 7440A and 7450A by complying with FINRA Rules 7440 and 7450, respectively. Nasdaq places the same text under Nasdaq Rules 7440A(a) and 7450A(a), respectively.

¹¹ The Exchange is not including text from Nasdaq Rule 7440A(a) and 7450A(a), which notes that members are complying with these rules by complying with the related FINRA rules, in Rules 7440A(a) and 7450A(a). The Exchange believes these sentences are duplicative of the first sentence of Rules 7440A(a) and 7450A(a).

¹² See Securities Exchange Act Release No. 71623 (February 27, 2014), 79 FR 12558 (March 5, 2014) (SR-FINRA-2013-050).

(b)(21),¹⁶ (c)(1)(H),¹⁷ (c)(2)(A)(viii) and (ix),¹⁸ (c)(3)(A)(ix) and (x),¹⁹ (c)(4)(A)(x) and (xi),²⁰ (c)(5)(A)(x) and (xi),²¹ (c)(6)(k) and (l),²² and (d)(4).²³ The Exchange believes that these changes are appropriate for the reasons described by FINRA when it adopted the changes, and because adopting these changes will harmonize the Exchange's rules with those of Nasdaq and FINRA. Last and consistent with Nasdaq Rule 7440A(b), the Exchange is proposing to add new Rule 7440A(c), which provides that references to certain FINRA Rules are to be construed as references to certain Rules of the Exchange. Specifically, Rule 7440A(c)(1) provides that references to Rules FINRA Rules 7420

¹³ See Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (SR-FINRA-2010-052).

¹⁴ See Securities Exchange Act Release No. 63032 (October 4, 2010), 75 FR 62439 (October 8, 2010) (SR-FINRA-2010-043).

¹⁵ See Securities Exchange Act Release No. 77523 (April 5, 2016), 81 FR 21427 (April 11, 2016) (SR-FINRA-2016-006).

¹⁶ See Securities Exchange Act Release No. 77164 (February 17, 2016), 81 FR 9043 (February 23, 2016) (SR-FINRA-2015-048).

¹⁷ See Securities Exchange Act Release No. 66021 (December 21, 2011), 76 FR 81551 (December 28, 2011) (SR-FINRA-2011-063).

¹⁸ See Securities Exchange Act Release No. 63032 (October 4, 2010), 75 FR 62439 (October 8, 2010) (SR-FINRA-2010-043).

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

²³ See Securities Exchange Act Release No. 77164 (February 17, 2016), 81 FR 9043 (February 23, 2016) (SR-FINRA-2015-048).

through 7460 shall be construed as references to Rules 7420A through 7460A.²⁴ Rule 7440A(c)(2) provides that references to FINRA Rules 5320, 7440, and 7450 shall be construed as references to Rules 765, 7440A, and 7450A, respectively.

Current Rule 3405 concerns order data transmission requirements and is meant to copy FINRA Rule 7450. Unlike Nasdaq, which incorporated by reference FINRA Rule 7450 into Nasdaq Rule 7450A, the Exchange instead adopted actual rule text that copied the requirements of FINRA Rule 7450 under Rule 3405. The Exchange is proposing to adopt the approach followed by Nasdaq by incorporating by reference the FINRA rule. Specifically, the Exchange is incorporating by reference FINRA Rule 7450 into Rule 7450A, amending existing paragraphs (a) – (d) to conform them to Nasdaq’s Rule 7450A(a) – (d), and deleting paragraphs (e) and (f), which are no longer needed since the Exchange is incorporating by reference FINRA Rule 7450. The Exchange notes that FINRA amended FINRA Rule 7450 subsequent to the Exchange adopting Rule 3405; however, the Exchange did not update its rule to reflect these changes. Specifically, FINRA amended Rule 7450(b),²⁵ which concerns the method and timing of transmitting data and which is covered under Rule 3405(e). The changes made by FINRA provided greater specificity to the timing of certain reports required by the rule. The Exchange believes that the changes to FINRA Rule 7450(b) are appropriate for the reasons described by FINRA when it adopted the changes, and because adopting these changes will harmonize the Exchange’s rules with those of Nasdaq and FINRA. Last, the

²⁴ The Exchange notes that Nasdaq Rules 7440A(b)(1) and (2) do not state that certain rules referenced under Nasdaq Rule 7440A are FINRA rules. The Exchange is making it clear under Rules 7440A(c)(1) and (2) that the rules referenced under Rule 7440A are FINRA rules.

²⁵ See note 16, supra.

Exchange notes that renumbered Rule 7450A(b) requires both Proprietary Trading Firms as well as their associated persons to comply with FINRA Rule 7450 in limited circumstances, whereas Nasdaq's Rule 7450A only requires compliance by Proprietary Trading Firms. The Exchange believes that this is an omission in the Nasdaq rule and is accordingly not adjusting the Exchange rule.

Fourth Change

The Exchange is proposing to delete current Rule 3407, which will be renumbered Rule 7470A and held in reserve. Current Rule 3407 provided an exemption from the order recording and data transmission requirements of current Rules 3404 and 3405, which are OATS rules applicable to manual orders. To qualify for the exemption, a member must have met the following criteria: (1) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud; (2) the member has annual revenues of less than \$2 million; (3) the member does not conduct any market making activities in equity securities listed on the Exchange; (4) the member does not execute principal transactions with its customers (with a limited exception for principal transactions executed pursuant to error corrections); and (5) the member does not conduct clearing or carrying activities for other firms. The exemption was limited to a maximum time of two years although a member was able to request an additional exemption prior to the expiration of a grant of existing exemptive relief. The exemptive authority provided by the rule permitted the Exchange to grant relief to members that meet certain criteria in situations where, for example, the reporting of order information would be unduly burdensome for the member or where

temporary relief from the OATS Rules, in the form of additional time to achieve compliance, would permit the members to avoid unnecessary expense or hardship. The exemption has not been requested by any Exchange member to date and the Exchange does not believe that Exchange members are likely to need the exemption, since the vast majority of such members to which the rule applies are electronic proprietary trading firms that would not qualify for the exemption. Moreover, Nasdaq does not have an analogous rule, having eliminated similar text recently for the same reasons.²⁶ Thus, the Exchange is proposing to eliminate the rule text under Rule 3407 from its rule book, renumber the rule to Rule 7470A, and hold the rule in reserve.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by harmonizing the Exchange's OATS rules with those of FINRA, on which they are based, and with those of Nasdaq, which they should largely match. Consequently, the proposed change will conform Exchange Rules to changes made to corresponding FINRA and Nasdaq rules, thus promoting consistent regulatory standards with respect to rules that FINRA enforces pursuant to its Regulatory Services Agreements with the Exchange and

²⁶ Id.

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

Nasdaq. With respect to the proposed amendment to Rule 7410A(n)(1), the exemption will provide Exchange members with the same flexibility to transition to a new clearing firm that both Nasdaq and FINRA members currently enjoy. The rule is intended to accommodate introducing firms that transition to a different clearing firm over time and, during the transition, route their orders to two different clearing firms, both of which report the introducing firm's information to OATS during the transition time. Adopting the new and amended rule text under Rule 7410A will also align the Exchange rulebook with Nasdaq's and FINRA's, thereby reducing complexity from FINRA's work under a regulatory services agreement with the Exchange.

The Exchange believes that adopting the new limited exception to the definition of "Order" is consistent with the Act because it provides a very narrow exemption from reporting transactions that are done to manage risk and facilitate options market making. Bona fide hedging transactions in equity securities that are undertaken by options market makers do not involve customer orders in those equity securities and thus do not implicate customer protection issues. Moreover, information regarding bona fide hedging transactions retained by a registered Phlx Options Market market maker is otherwise available to FINRA and Phlx Regulation through the Exchange's electronic delivery systems, upon request. This information includes trade reporting data, including order time and sales data captured by the Exchange system.

With respect to the proposed technical corrections to the rules, the Exchange believes that these changes are consistent with the Act because they will prevent investor confusion that may be caused by including in the Rules incorrect rule citations, defunct rule text and expired exemptions.

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. The proposed rule change aligns the Exchange's rules with those of Nasdaq and FINRA, which will assist FINRA in its oversight work done pursuant to a regulatory services agreement. The proposed changes also provide uniform standards with which market participants must comply. Consequently, the Exchange does not believe that the proposed changes implicate competition at all.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not Applicable.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)²⁹ of the Act and Rule 19b-4(f)(6) thereunder³⁰ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

²⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁰ 17 CFR 240.19b-4(f)(6).

The Exchange is proposing to harmonize its rules with those of Nasdaq and FINRA, which is consistent with investor protection because doing so will ensure that the rules and obligations concerning OATS reporting are consistent with those of Nasdaq and FINRA. Adopting uniform rules will also simplify the oversight process conducted by FINRA pursuant to a Regulatory Services Agreement with the Exchange.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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 necessary or appropriate in the public interest, for the protection of investors, or 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

Based on the Nasdaq Rule 7000A Series and FINRA Rule 7000 Series, as described above.

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-2018-68)

November __, 2018

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Rule 3400 Series

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 October 25, 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 the Rule 3400 Series concerning the Order Audit Trail System to make conforming and technical changes.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange is proposing to amend the Rule 3400 Series concerning the Order Audit Trail System to: (1) renumber the Rule 3400 Series to conform it to the numbering convention used by the Nasdaq Stock Market LLC ("Nasdaq") and FINRA; (2) amend Rule 7410A to expand two existing exemptions and to make technical changes to text under the rule; (3) incorporate by reference FINRA Rules 7430, 7440 and 7450 in Rules 7430A, 7440A and 7450A, respectively, and make conforming changes thereto; and (4) delete Rule 3407.³

The Exchange's Rule 3400 Series imposes an obligation on Exchange members to record in electronic form and report to FINRA on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in Nasdaq- and Exchange-listed stocks. FINRA's Order Audit Trail System ("OATS") captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes, and transactions. This information is used by FINRA staff to conduct surveillance and investigations of members for potential violation of Exchange rules and federal securities laws.

³ The Exchange is filing a request for an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for certain rules included in this proposal, and will implement the changes proposed herein upon approval of the exemption request.

The Exchange adopted the Rule 3400 Series to copy Nasdaq and FINRA OATS rules, where appropriate. As a general principle, the Exchange endeavors to keep its rules that are corresponding to FINRA rules as closely worded and structured as possible to the FINRA rules on which they are based, including FINRA's OATS rules under the FINRA Rule 7000 Series. In certain instances, the Exchange has not copied a FINRA OATS rule because it is not relevant. For example, the Exchange has not copied FINRA Rule 7410(o)(2), which concerns an exception to the definition of a Reporting Member relating to members operating on equities floors, because the Exchange does not operate an equities floor. Generally, the Exchange also seeks to keep the Rule 3400 Series consistent with Nasdaq's Rule 7400A Series, the substance of which is identical to the related rules of the Exchange. The proposed changes will harmonize Exchange rules with analogous Nasdaq and FINRA rules, which have changed since the Exchange first adopted its rules.

First Change

The Exchange is proposing to renumber the Rule 3400 Series to a new Rule 7000A Series, which is identical to how Nasdaq presents its OATS rules. The Exchange does not currently have a Rule 7000A Series and the Exchange is proposing to follow the numbering convention used by FINRA and NASDAQ. As part of this change, the Exchange is also updating cross references in the Rule 7000A Series.

Second Change

The Exchange is amending renumbered Rule 7410A to make several changes to conform it to the rules of Nasdaq. The Exchange is proposing to add new text noting that the terms under the rule have the same meaning as those defined in the Exchange's By-

Laws and rules, unless otherwise noted, which is identical to Nasdaq's Rule 7410A(a). The Exchange is also amending Rule 7410A to make technical changes that harmonize the definitions of "Index Arbitrage Trade," "Program Trade," and "Proprietary Trading Firm" with the definitions of those terms in the Nasdaq rules.⁴

The Exchange is also proposing to adopt the same limited exemption from OATS order data recordation requirements for Exchange members that are registered market makers in standardized options on any market. Renumbered Rule 7410A(j) defines the term "Order" as any oral, written, or electronic instruction to effect a transaction in an equity security listed on the Exchange or Nasdaq that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities in an Exchange-listed equity security. The Exchange is proposing to adopt the limited exemption currently available under Nasdaq's analogous definition of "Order,"⁵ which excludes from the definition a bona fide hedge transaction involving a Nasdaq-listed equity security originated by a trading desk in the ordinary course of the member's options market making activities.⁶ As noted by Nasdaq in

⁴ The Exchange is not adopting the definition of "NMS Stock" found under Nasdaq Rule 7410A(j). The term is not used in the Exchange's OATS rules. In addition, the term is not used in the Nasdaq OATS rules. The term is used in FINRA Rule 7410(k) defining "Order Audit Trail System, whereas the Exchange and Nasdaq instead reference Exchange and Nasdaq listed securities under Exchange renumbered Rule 7410A(k) and Nasdaq listed securities under Nasdaq Rule 7410A(l).

⁵ See Nasdaq Rule 7410A(k).

⁶ The Exchange notes that Nasdaq capitalizes the term "Bona Fide Hedge Transaction" in Nasdaq Rule 7410A(k), although the term is not defined in

adopting the exemption, OATS was designed to provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an equity order at the first point of contact between the broker-dealer and the customer or counterparty and further documenting the life of the equity order through the process of execution.⁷ The proposed rule change does not impact the customer protection orientation of OATS since, by definition, bona fide hedging transactions in equity securities that are undertaken by options market makers do not involve customer orders in those equity securities. Rather, bona fide hedging transactions in equity securities are undertaken by an options market maker to hedge against the firm risk that it creates through its conduct as a registered options market maker. Accordingly, bona fide hedge transactions do not implicate customer protection issues, and requiring reporting of such transactions would not provide a regulatory benefit. It is also very expensive for firms that are not currently FINRA members or that do not currently trade Exchange or Nasdaq equities to develop and maintain the compliance systems and compliance staff required to continuously monitor the daily transmission of OATS data. For these reasons, the Exchange is proposing to adopt such an exemption, available to its options market makers.

The Exchange is proposing to amend Rule 7410A(n)(1) to harmonize the rule with FINRA Rule 7410(o)(1)(A) and Nasdaq Rule 7410A(o)(1)(A). Rule 7410A(n) provides the definition of “Reporting Member Organization,” which means a member organization that receives or originates an order and has an obligation to record and

Nasdaq’s rules. The Exchange believes that capitalizing the term was an error and is therefore not capitalizing the term in Rule 7410A(j).

⁷ See Securities Exchange Act Release No. 59369 (February 6, 2009), 74 FR 7278 (February 13, 2009) (SR-NASDAQ-2008-097).

report information under renumbered Rules 7440A and 7450A. The Rule also provides an exception to the general definition if the member organization meets four conditions. The first condition in subparagraph (n)(1), which is the only condition at issue in this proposal, is that currently the member organization engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member Organization. On May 12, 2014, FINRA amended FINRA Rule 7410(o)(1)(A) to allow a member to satisfy this condition by permitting a member to alternatively route its orders to two receiving Reporting Members, if two related requirements were met.⁸ First, the orders must be routed by the member to each receiving Reporting Member on a pre-determined schedule approved by FINRA. Second, the orders must be routed by the member to two receiving Reporting Members pursuant to the schedule for a time period not to exceed one year. FINRA noted in adopting the change that the rule was intended to accommodate introducing firms that transition to a different clearing firm over time and, during the transition, route their orders to two different clearing firms, both of which report the introducing firm's information to OATS during the transition time. Nasdaq recently amended its rule to incorporate this change.⁹ The Exchange believes that this additional limited exception is appropriate for its member organizations, which likewise may encounter a transition to a clearing firm whereby they would no longer be eligible for the exception to the definition

⁸ See Securities Exchange Act Release No. 72191 (May 20, 2014), 79 FR 30219 (May 27, 2014) (SR-FINRA-2014-024).

⁹ See Securities Exchange Act Release No. 83115 (April 26, 2018), 83 FR 19384 (May 2, 2018) (SR-NASDAQ-2018-030).

of Reporting Member Organization. Accordingly, the Exchange is proposing to adopt the FINRA rule text under renumbered Rule 7410A(n)(1)(B).

Third Change

The Exchange is proposing to incorporate by reference FINRA Rules 7430, 7440 and 7450 in Rules 7430A, 7440A and 7450A, respectively, and make conforming changes thereto.¹⁰ Current Rule 3403 concerns synchronization of Member Organization business clocks and is substantially identical to FINRA Rule 4590(a). Nasdaq Rule 7430A requires Nasdaq members to comply with FINRA Rule 4590 as if such rule were part of Nasdaq's rules and provides that references to "the FINRA By-Laws or other FINRA rules" shall be construed as references to "the Nasdaq Rules," for purposes of Nasdaq Rule 7430A. The Exchange is proposing to conform its rule text to that of Nasdaq.¹¹

With respect to Rule 7440A, the Exchange is proposing to copy Nasdaq Rule 7440A and incorporate by reference FINRA Rule 7440. Current Rule 3404 is meant to copy FINRA Rule 7440; however, FINRA amended FINRA Rule 7440 subsequent to the Exchange adopting Rule 3404 and the Exchange did not update its rule to reflect these

¹⁰ The Exchange is proposing to add text to Rules 7440A and 7450A, which notes that Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange, and also notes that members are complying with Rules 7440A and 7450A by complying with FINRA Rules 7440 and 7450, respectively. Nasdaq places the same text under Nasdaq Rules 7440A(a) and 7450A(a), respectively.

¹¹ The Exchange is not including text from Nasdaq Rule 7440A(a) and 7450A(a), which notes that members are complying with these rules by complying with the related FINRA rules, in Rules 7440A(a) and 7450A(a). The Exchange believes these sentences are duplicative of the first sentence of Rules 7440A(a) and 7450A(a).

changes. Specifically, FINRA amended Rules 7440(a)(2),¹² (a)(4),¹³ (b)(9),¹⁴ (b)(19),¹⁵ (b)(21),¹⁶ (c)(1)(H),¹⁷ (c)(2)(A)(viii) and (ix),¹⁸ (c)(3)(A)(ix) and (x),¹⁹ (c)(4)(A)(x) and (xi),²⁰ (c)(5)(A)(x) and (xi),²¹ (c)(6)(k) and (l),²² and (d)(4).²³ The Exchange believes that these changes are appropriate for the reasons described by FINRA when it adopted the changes, and because adopting these changes will harmonize the Exchange's rules with those of Nasdaq and FINRA. Last and consistent with Nasdaq Rule 7440A(b), the Exchange is proposing to add new Rule 7440A(c), which provides that references to certain FINRA Rules are to be construed as references to certain Rules of the Exchange.

¹² See Securities Exchange Act Release No. 71623 (February 27, 2014), 79 FR 12558 (March 5, 2014) (SR-FINRA-2013-050).

¹³ See Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (SR-FINRA-2010-052).

¹⁴ See Securities Exchange Act Release No. 63032 (October 4, 2010), 75 FR 62439 (October 8, 2010) (SR-FINRA-2010-043).

¹⁵ See Securities Exchange Act Release No. 77523 (April 5, 2016), 81 FR 21427 (April 11, 2016) (SR-FINRA-2016-006).

¹⁶ See Securities Exchange Act Release No. 77164 (February 17, 2016), 81 FR 9043 (February 23, 2016) (SR-FINRA-2015-048).

¹⁷ See Securities Exchange Act Release No. 66021 (December 21, 2011), 76 FR 81551 (December 28, 2011) (SR-FINRA-2011-063).

¹⁸ See Securities Exchange Act Release No. 63032 (October 4, 2010), 75 FR 62439 (October 8, 2010) (SR-FINRA-2010-043).

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

²³ See Securities Exchange Act Release No. 77164 (February 17, 2016), 81 FR 9043 (February 23, 2016) (SR-FINRA-2015-048).

Specifically, Rule 7440A(c)(1) provides that references to Rules FINRA Rules 7420 through 7460 shall be construed as references to Rules 7420A through 7460A.²⁴ Rule 7440A(c)(2) provides that references to FINRA Rules 5320, 7440, and 7450 shall be construed as references to Rules 765, 7440A, and 7450A, respectively.

Current Rule 3405 concerns order data transmission requirements and is meant to copy FINRA Rule 7450. Unlike Nasdaq, which incorporated by reference FINRA Rule 7450 into Nasdaq Rule 7450A, the Exchange instead adopted actual rule text that copied the requirements of FINRA Rule 7450 under Rule 3405. The Exchange is proposing to adopt the approach followed by Nasdaq by incorporating by reference the FINRA rule. Specifically, the Exchange is incorporating by reference FINRA Rule 7450 into Rule 7450A, amending existing paragraphs (a) – (d) to conform them to Nasdaq’s Rule 7450A(a) – (d), and deleting paragraphs (e) and (f), which are no longer needed since the Exchange is incorporating by reference FINRA Rule 7450. The Exchange notes that FINRA amended FINRA Rule 7450 subsequent to the Exchange adopting Rule 3405; however, the Exchange did not update its rule to reflect these changes. Specifically, FINRA amended Rule 7450(b),²⁵ which concerns the method and timing of transmitting data and which is covered under Rule 3405(e). The changes made by FINRA provided greater specificity to the timing of certain reports required by the rule. The Exchange believes that the changes to FINRA Rule 7450(b) are appropriate for the reasons described by FINRA when it adopted the changes, and because adopting these changes

²⁴ The Exchange notes that Nasdaq Rules 7440A(b)(1) and (2) do not state that certain rules referenced under Nasdaq Rule 7440A are FINRA rules. The Exchange is making it clear under Rules 7440A(c)(1) and (2) that the rules referenced under Rule 7440A are FINRA rules.

²⁵ See note 16, supra.

will harmonize the Exchange's rules with those of Nasdaq and FINRA. Last, the Exchange notes that renumbered Rule 7450A(b) requires both Proprietary Trading Firms as well as their associated persons to comply with FINRA Rule 7450 in limited circumstances, whereas Nasdaq's Rule 7450A only requires compliance by Proprietary Trading Firms. The Exchange believes that this is an omission in the Nasdaq rule and is accordingly not adjusting the Exchange rule.

Fourth Change

The Exchange is proposing to delete current Rule 3407, which will be renumbered Rule 7470A and held in reserve. Current Rule 3407 provided an exemption from the order recording and data transmission requirements of current Rules 3404 and 3405, which are OATS rules applicable to manual orders. To qualify for the exemption, a member must have met the following criteria: (1) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud; (2) the member has annual revenues of less than \$2 million; (3) the member does not conduct any market making activities in equity securities listed on the Exchange; (4) the member does not execute principal transactions with its customers (with a limited exception for principal transactions executed pursuant to error corrections); and (5) the member does not conduct clearing or carrying activities for other firms. The exemption was limited to a maximum time of two years although a member was able to request an additional exemption prior to the expiration of a grant of existing exemptive relief. The exemptive authority provided by the rule permitted the Exchange to grant relief to members that meet certain criteria in situations where, for example, the

reporting of order information would be unduly burdensome for the member or where temporary relief from the OATS Rules, in the form of additional time to achieve compliance, would permit the members to avoid unnecessary expense or hardship. The exemption has not been requested by any Exchange member to date and the Exchange does not believe that Exchange members are likely to need the exemption, since the vast majority of such members to which the rule applies are electronic proprietary trading firms that would not qualify for the exemption. Moreover, Nasdaq does not have an analogous rule, having eliminated similar text recently for the same reasons.²⁶ Thus, the Exchange is proposing to eliminate the rule text under Rule 3407 from its rule book, renumber the rule to Rule 7470A, and hold the rule in reserve

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by harmonizing the Exchange's OATS rules with those of FINRA, on which they are based, and with those of Nasdaq, which they should largely match. Consequently, the proposed change will conform Exchange Rules to changes made to corresponding FINRA and Nasdaq rules, thus promoting consistent regulatory standards with respect to rules that

²⁶ Id.

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

FINRA enforces pursuant to its Regulatory Services Agreements with the Exchange and Nasdaq. With respect to the proposed amendment to Rule 7410A(n)(1), the exemption will provide Exchange members with the same flexibility to transition to a new clearing firm that both Nasdaq and FINRA members currently enjoy. The rule is intended to accommodate introducing firms that transition to a different clearing firm over time and, during the transition, route their orders to two different clearing firms, both of which report the introducing firm's information to OATS during the transition time. Adopting the new and amended rule text under Rule 7410A will also align the Exchange rulebook with Nasdaq's and FINRA's, thereby reducing complexity from FINRA's work under a regulatory services agreement with the Exchange.

The Exchange believes that adopting the new limited exception to the definition of "Order" is consistent with the Act because it provides a very narrow exemption from reporting transactions that are done to manage risk and facilitate options market making. Bona fide hedging transactions in equity securities that are undertaken by options market makers do not involve customer orders in those equity securities and thus do not implicate customer protection issues. Moreover, information regarding bona fide hedging transactions retained by a registered Phlx Options Market market maker is otherwise available to FINRA and Phlx Regulation through the Exchange's electronic delivery systems, upon request. This information includes trade reporting data, including order time and sales data captured by the Exchange system.

With respect to the proposed technical corrections to the rules, the Exchange believes that these changes are consistent with the Act because they will prevent investor

confusion that may be caused by including in the Rules incorrect rule citations, defunct rule text and expired exemptions

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. The proposed rule change aligns the Exchange's rules with those of Nasdaq and FINRA, which will assist FINRA in its oversight work done pursuant to a regulatory services agreement. The proposed changes also provide uniform standards with which market participants must comply. Consequently, the Exchange does not believe that the proposed changes implicate competition at all.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.³⁰

²⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the

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 necessary or appropriate in the public interest, for the protection of investors, or 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. Please include File Number SR-Phlx-2018-68 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-2018-68. 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

proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2018-68 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.³¹

Eduardo A. Aleman
Assistant Secretary

³¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq PHLX Rules

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Nasdaq PSX Rules

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Rule 7400A[3400]. Order Audit Trail System**Rule 7410A[3401]. Definitions**

For purposes of the Rule 7400A[3400] Series:

(a) Terms shall have the same meaning as those defined in the Exchange By-Laws and rules, unless otherwise specified.

(b[a]) “Bunched Order” shall mean two or more orders that are aggregated prior to execution.

(c[b]) “Customer” shall mean a person other than a broker or dealer.

(d[c]) “Nasdaq PSX” or “PSX” shall mean the service provided by the Exchange that[, among other things,] provides for the automated execution and reporting of transactions in securities.

(e[d]) “Electronic Communication Network” shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or over-the-counter market maker, and permits such orders to be executed in whole or in part, and as further defined in rule 600 of SEC Regulation NMS.

(f[e]) “Electronic Order” shall mean an order captured by a member organization in an electronic order-routing or execution system.

(g[f]) “Index Arbitrage Trade” shall have the same meaning as the term “Index Arbitrage”[mean an arbitrage trading strategy involving the purchase or sale of a “basket” or group of securities in conjunction with the purchase or sale, or intended purchase or sale, of one or more cash-settled options or futures contracts on index stock groups, or options on any such futures contracts in an attempt to profit by the price difference, as further defined] in New York Stock Exchange [r]Rule 7410[132B].

(h[g]) “Intermarket sweep order” shall have the same meaning as contained in Rule 600 of SEC Regulation NMS.

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

(j[i]) “Order” shall mean any oral, written, or electronic instruction to effect a transaction in an equity security listed on the Exchange or The Nasdaq Stock Market that is received by a member organization from another person for handling or execution, or that is originated by a department of a member organization for execution by the same or another broker or dealer that is a FINRA member or an Exchange member organization, other than any such instruction to effect (1) a proprietary transaction originated by a trading desk in the ordinary course of a member organization’s market making activities in an Exchange- or Nasdaq-listed equity security or (2) effect a bona fide hedge transaction involving an Exchange- or Nasdaq-listed equity security originated by a trading desk in the ordinary course of the member organization’s options market making activities.

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

(l[k]) “Program Trade” shall have the same meaning as the term “Program Trading” in New York Stock Exchange Rule 7410[mean a trading strategy involving the related purchase or sale of a group of 15 or more securities having a total market value of \$1 million or more, as further defined in New York Stock Exchange rule 132B].

(m[l]) “Reporting Agent” shall mean a third party that enters into any agreement with a member organization pursuant to which the Reporting Agent agrees to fulfill such member organization’s obligations under Rule 7450A[3405].

(n[m]) “Reporting Member Organization” shall mean a member organization that receives or originates an order and has an obligation to record and report information under Rules 7440A[3404] and 7450A[3405]. A member organization shall not be considered a Reporting Member Organization in connection with an order, if the following conditions are met:

(1) the member organization engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to[a single receiving Reporting Member Organization;];

(A) a single receiving Reporting Member Organization; or

(B) two receiving Reporting Member Organizations, provided:

(i) orders are routed by the member to each receiving Reporting Member Organization on a predetermined schedule approved by FINRA; and

(ii) orders are routed to two receiving Reporting Member Organizations pursuant to the schedule for a time period not to exceed one year; and

- (2) the member organization does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member Organization;
- (3) the receiving Reporting Member Organization records and reports all information required under Rules 7440A[3404] and 7450A[3405] with respect to the order; and
- (4) the member organization has a written agreement with the receiving Reporting Member Organization specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules 7440A[3404] and 7450A[3405].

(o[n]) “Proprietary Trading Firm” shall mean an Exchange member organization that trades its own capital and that does not have “customers,” as that term is defined in paragraph (c) of this Rule, and that is not a FINRA member. The funds used by a Proprietary Trading firm must be exclusively firm funds and all trading must be in the firm’s accounts. Traders must be owners of, employees of, or contractors to the firm.

Rule 7420A[3402]. Applicability

(a) Unless otherwise indicated, the requirements of the Rule 7400A[3400] Series are in addition to the requirements contained elsewhere in the Rules of the Exchange.

(b) Unless otherwise indicated, the requirements of the Rule 7400A[3400] Series shall apply to all Exchange member organizations and to their associated persons.

(c) Unless otherwise indicated, the requirements of the Rule 7400A[3400] Series shall apply to all executed or unexecuted orders for equity securities listed on the Exchange or on The Nasdaq Stock Market.

Rule 7430A[3403]. Synchronization of Member Organization Business Clocks

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

(a) Exchange member organizations shall comply with FINRA Rule 4590 as if such Rule were part of the Exchange’s rules.

(b) For purposes of this Rule, references to “the FINRA By-Laws or other FINRA rules” shall be construed as references to “the Exchange Rules”.

Rule 7440A[3404]. Recording of Order Information

(a) With respect to orders for securities listed on Nasdaq, Exchange member organizations and persons associated with a member organization shall comply with FINRA Rule 7440 as if such Rule were part of the Rules of the Exchange. The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Rule 7440A are being performed by FINRA on behalf of the Exchange.

(b) With respect to orders for securities listed on the Exchange, Exchange members and persons associated with a member shall comply with FINRA Rule 7440 as if such Rule applied to orders for securities listed on the Exchange and such Rule were part of the Rules of the Exchange.

(c) For purposes of this Rule:

(1) references to FINRA Rules 7420 through 7460 shall be construed as references to Rules 7420A through 7460A;

(2) references to FINRA Rules 5320, 7440, and 7450 shall be construed as references to Rules 765, 7440A, and 7450A, respectively.

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

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

(a) Procedures

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

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

(B) immediately following the transmission of an order to another broker or dealer that is a FINRA member or an Exchange member organization, or from one department to another within the same member organization, record each

item of information described in paragraph (c) of this Rule that applies with respect to such transmission; and

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

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

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

(4) Maintaining and Preserving Records

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

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

(b) Order Origination and Receipt

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

- (1) an order identifier meeting such parameters as may be prescribed by the Exchange assigned to the order by the Reporting Member Organization that uniquely identifies the order for the date it was received;
- (2) the identification symbol assigned by the Exchange to the security to which the order applies;
- (3) the market participant symbol assigned by the Exchange to the Reporting Member Organization;
- (4) the identification of any department or the identification number of any terminal where an order is received directly from a customer;

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

(c) Order Transmittal

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

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

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

- (i) the fact that the order was received by an Electronic Communications Network,
 - (ii) the routed order identifier assigned to the order by the member organization that transmits the order,
 - (iii) the market participant symbol assigned by FINRA to the transmitting Reporting Member Organization, and
 - (iv) other information items in Rule 3404(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).
- (4) When a member organization manually transmits an order to another broker that is a FINRA member or an Exchange member organization, other than to an Electronic Communications Network:
- (A) the transmitting Reporting Member Organization shall record:
 - (i) the fact that the order was transmitted manually,
 - (ii) the order identifier assigned to the order by the Reporting Member Organization,
 - (iii) the market participant symbol assigned by the Exchange to the Reporting Member Organization,
 - (iv) the market participant symbol assigned by the Exchange to the broker or dealer to which the order is transmitted,
 - (v) the date the order was first originated or received by the Reporting Member Organization,
 - (vi) the date and time the order is transmitted,
 - (vii) the number of shares to which the transmission applies,
 - (viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member Organization, and
 - (ix) whether the order is an intermarket sweep order; and
 - (B) the receiving broker or dealer shall record, in addition to all other information items in Rule 3404(b) that apply with respect to such order:

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

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

(A) the transmitting Reporting Member Organization shall record:

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

(B) the receiving Electronic Communications Network shall record:

- (i) the fact that the order was received manually,
- (ii) the market participant symbol assigned by the Exchange to the transmitting Reporting Member Organization, and
- (iii) other information items in Rule 3404(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

- (6) When a member organization transmits an order to a person that is not a FINRA member or an Exchange member organization, including but not limited to a national securities exchange, the Reporting Member Organization shall record:
- (A) the fact that the order was transmitted to a non-member,
 - (B) the order identifier assigned to the order by the Reporting Member Organization,
 - (C) the market participant symbol assigned by FINRA to the Reporting Member Organization,
 - (D) the date the order was first originated or received by the Reporting Member Organization,
 - (E) the date and time the order is transmitted,
 - (F) the number of shares to which the transmission applies,
 - (G) for each manual order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member Organization,
 - (H) the routed order identifier or other unique identifier required by the non-member receiving the order, as applicable,
 - (I) identification of the non-member where the trade was transmitted, and
 - (J) whether the order is an intermarket sweep order.

(d) Order Modifications, Cancellations, and Executions

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

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

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

- (H) the date and time of execution;
- (I) the execution price,
- (J) the capacity in which the member organization executed the transaction (e.g., agency, principal or riskless principal), and
- (K) the national securities exchange or facility operated by a registered securities association where the trade was reported.

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

Rule 7450A[3405]. Order Data Transmission Requirements

(a) [Securities Listed on Nasdaq.]

Except as provided in paragraph (b), with respect to orders for securities listed on The Nasdaq Stock Market, Exchange member organizations and persons associated with a member organization shall comply with FINRA Rule 7450 as if such Rule were part of the Rules of the Exchange. The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Exchange Rule 7450A are being performed by FINRA on behalf of the Exchange[subsections (d), (e), and (f) of this Rule at all times].

(b) [Proprietary Trading Firms.]

Proprietary Trading Firms and their associated persons shall be required to comply with FINRA Rule 7450[subsections (d), (e), and (f) of this] as if such Rule were part of the Exchange's rules only when they receive a request from the Exchange's Regulation Department to submit order information with respect to specific time periods identified in such request. Nothing in this Rule shall be construed to limit the obligations of Proprietary Trading Firms and their associated persons under any other Rule of the 7400A[3400] Series, including but not limited to, Rule 7440A[3404].

(c) [Securities Listed on the Exchange.]

With respect to orders for securities listed on the Exchange, Exchange member organizations and their associated persons shall be required to comply with FINRA Rule 7450 as if such Rule applied to[subsections (d), (e), and (f) of this Rule for] orders for securities listed on the Exchange and such Rule were part of the Rules of the Exchange, but only when they receive a request from the Exchange's Regulation Department to submit order information with respect to specific time periods identified in such request. Nothing in this Rule shall be construed to limit the obligations of Exchange member

organizations and their associated persons under any other Rule of the 7400A[3400] Series, including but not limited to, Rule 7440A[3404].

(d) For purposes of this Rule, references to Rule 7440 shall be construed as references to Rule 7440A.[General Requirement

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

(e) Method of Transmitting Data

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

(f) Reporting Agent Agreements

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

Rule 7460A[3406]. Violation of Order Audit Trail System Rules

Failure of a member organization or person associated with a member organization to comply with any of the requirements of [the]Rule 7410A through Rule 7460A[3400 Series] may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 707.

Rule 7470A. Reserved[3407. Exemption to the Order Recording and Data Transmission Requirements

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

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

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

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

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