

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 16	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2019 - * 31
Amendment No. (req. for Amendments *)		

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

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

Proposal to modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to a systems issue experienced by SIAC on August 12, 2019, which impacted trade and quote dissemination across all markets.

**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 08/28/2019 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 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) Nasdaq PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to a systems issue experienced by SIAC on August 12, 2019, which impacted trade and quote dissemination across all markets.

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

(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 26, 2018. 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

---

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

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

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

a. Purpose

The Exchange proposes to modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to the August 12, 2019 systems issue, which impacted trade and quote dissemination across all markets.<sup>3</sup> Specifically, on August 12, 2019, SIAC<sup>4</sup> determined to fail over to back up servers after receiving indications that its primary systems had become unstable, causing connectivity disruptions. The fail over to secondary systems failed to cure the problem, resulting in market-wide issues with the Consolidated Quote System and the Consolidated Tape System, including gaps in the intra-day trades, quotes, and other messages that were attempted to be sent to it. Consequently, the accuracy of the transaction and quotation data for August 12, 2019 is unknown.

As a result, the Exchange is unable to accurately calculate member transaction fees and credits, including calculations for the Exchange's incentive programs, since several of the Exchange's transaction fees and credits are based on trading, quoting and liquidity thresholds that members must satisfy in order to qualify for the particular rates (e.g., percentage of Consolidated Volume, Average Daily Volume, and time at the NBBO). The Exchange therefore proposes to exclude August 12, 2019 from all tier

---

<sup>3</sup> See <https://www.ctaplan.com/alerts#110000144324>.

<sup>4</sup> SIAC is the operator of the Consolidated Quote System and Consolidated Tape System, which disseminate real-time trade and quote information in New York Stock Exchange LLC (Network A) and Bats, NYSE Arca, NYSE American and other regional exchange (Network B) listed securities.

calculations described in Equity 7<sup>5</sup> under the heading Order Execution and Routing in order to reasonably ensure that a member that would otherwise qualify for a particular threshold during August 2019, and the corresponding transaction rate and/or incentive, would not be negatively impacted by the August 12, 2019 systems issue.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>7</sup> 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. In this regard, because the accuracy of the transaction and quotation data disseminated by SIAC for August 12, 2019 is unknown, the Exchange believes that it is reasonable to exclude August 12, 2019 from all tier calculations described in Equity 7, which would reasonably ensure that a member's qualification for various pricing programs would be based on the data that the Exchange believes is accurate. The Exchange also believes that the proposed rule change is reasonable because the SIAC systems issue that caused inaccurate transaction data was not within the Exchange's control nor can the Exchange correct or otherwise remediate the issue. Including August 12, 2019 transaction and quotation data for purposes of tier calculations described in Equity 7 under the heading Order Execution and Routing could result in inaccurate determinations for member rates

---

<sup>5</sup> The Order Execution and Routing section under Equity 7 provides the schedule of fees and credits applicable to the PSX's order execution and routing services.

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

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

based on the extent to which their transactions and quotations were impacted by the August 12, 2019 event in comparison to the overall inaccuracies in the data provided by SIAC for that date. Consequently, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would result in all market participants on the Exchange being treated equally by excluding August 12, 2019 from all tier calculations described in the Order Execution and Routing section under Equity 7. Last, excluding August 12, 2019 from all tier calculations described in the Order Execution and Routing section under Equity 7 is in the public interest because it will provide Exchange members with the closest approximation of the fees and credits that they would have been eligible for if accurate data for August 12, 2019 were available and included in the monthly calculation.

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 would treat all market participants on the Exchange equally by excluding August 12, 2019 from all tier calculations described in Equity 7. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to fairly assess its members fees and to apply credits in light of systems issues that occurred, which are beyond the control of the Exchange.

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)<sup>8</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>9</sup> 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.

The proposed change promotes the protection of investors and the public interest by allowing the Exchange to assess fees and to apply credits under Equity 7 in the most accurate manner possible, in light of the significant systems issue that caused corrupted transaction and quotation data for Tape A and B securities. Similarly, the Exchange believes that the proposal does not impose any significant burden on competition because it will allow the Exchange to assess fees and to apply credits under Equity 7 in a manner that most accurately reflects a member's trading activity in comparison to that of the overall market for the month.

Furthermore, Rule 19b-4(f)(6)(iii)<sup>10</sup> requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that

---

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

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that it may exclude August 12, 2019 from the calculation for the month of August. The Exchange begins the calculation and billing of member fees and credits under Equity 7 at the close of each month. Consequently, an operative delay would disrupt the normal billing process, which may cause unnecessary expense and potential investor confusion.

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

Not applicable.

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

Not applicable.

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

Not applicable.



11. Exhibits

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

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2019-31)

August \_\_, 2019

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Manner in which it Calculates Volume, Liquidity and Quoting Thresholds Applicable to Billing on the Exchange in relation to a Systems Issue Experienced by SIAC on August 12, 2019

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 28, 2019, 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 modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to a systems issue experienced by SIAC on August 12, 2019, which impacted trade and quote dissemination across all markets.

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.

---

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

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

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

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

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

1. Purpose

The Exchange proposes to modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to the August 12, 2019 systems issue, which impacted trade and quote dissemination across all markets.<sup>3</sup> Specifically, on August 12, 2019, SIAC<sup>4</sup> determined to fail over to back up servers after receiving indications that its primary systems had become unstable, causing connectivity disruptions. The fail over to secondary systems failed to cure the problem, resulting in market-wide issues with the Consolidated Quote System and the Consolidated Tape System, including gaps in the intra-day trades, quotes, and other messages that were attempted to be sent to it. Consequently, the accuracy of the transaction and quotation data for August 12, 2019 is unknown.

---

<sup>3</sup> See <https://www.ctaplan.com/alerts#110000144324>.

<sup>4</sup> SIAC is the operator of the Consolidated Quote System and Consolidated Tape System, which disseminate real-time trade and quote information in New York Stock Exchange LLC (Network A) and Bats, NYSE Arca, NYSE American and other regional exchange (Network B) listed securities.

As a result, the Exchange is unable to accurately calculate member transaction fees and credits, including calculations for the Exchange's incentive programs, since several of the Exchange's transaction fees and credits are based on trading, quoting and liquidity thresholds that members must satisfy in order to qualify for the particular rates (e.g., percentage of Consolidated Volume, Average Daily Volume, and time at the NBBO). The Exchange therefore proposes to exclude August 12, 2019 from all tier calculations described in Equity 7<sup>5</sup> under the heading Order Execution and Routing in order to reasonably ensure that a member that would otherwise qualify for a particular threshold during August 2019, and the corresponding transaction rate and/or incentive, would not be negatively impacted by the August 12, 2019 systems issue.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>7</sup> 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. In this regard, because the accuracy of the transaction and quotation data disseminated by SIAC for August 12, 2019 is unknown, the Exchange believes that it is reasonable to exclude August 12, 2019 from all tier calculations described in Equity 7, which would reasonably ensure that a member's qualification for various pricing programs would be based on the

---

<sup>5</sup> The Order Execution and Routing section under Equity 7 provides the schedule of fees and credits applicable to the PSX's order execution and routing services.

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

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

data that the Exchange believes is accurate. The Exchange also believes that the proposed rule change is reasonable because the SIAC systems issue that caused inaccurate transaction data was not within the Exchange's control nor can the Exchange correct or otherwise remediate the issue. Including August 12, 2019 transaction and quotation data for purposes of tier calculations described in Equity 7 under the heading Order Execution and Routing could result in inaccurate determinations for member rates based on the extent to which their transactions and quotations were impacted by the August 12, 2019 event in comparison to the overall inaccuracies in the data provided by SIAC for that date. Consequently, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would result in all market participants on the Exchange being treated equally by excluding August 12, 2019 from all tier calculations described in the Order Execution and Routing section under Equity 7. Last, excluding August 12, 2019 from all tier calculations described in the Order Execution and Routing section under Equity 7 is in the public interest because it will provide Exchange members with the closest approximation of the fees and credits that they would have been eligible for if accurate data for August 12, 2019 were available and included in the monthly calculation.

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 would treat all market participants on the Exchange equally by excluding August 12, 2019 from all tier calculations described in Equity 7. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to fairly assess its members

fees and to apply credits in light of systems issues that occurred, which are beyond the control of the Exchange.

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 Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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.

---

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

<sup>9</sup> 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 proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

#### IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2019-31 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-2019-31. 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-2019-31 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Eduardo A. Aleman  
Assistant Secretary

---

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