

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="37"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2019"/> - * <input type="text" value="35"/>	Amendment No. (req. for Amendments *) <input type="text"/>
---	--	--	--

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)(6)
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

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

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

Description

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

Proposal to amend the Exchange transaction fees at Equity 7, Section 3.

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 * <input type="text" value="Brett"/>	Last Name * <input type="text" value="Kitt"/>
Title * <input type="text" value="Senior Associate General Counsel"/>	
E-mail * <input type="text" value="Brett.Kitt@nasdaq.com"/>	
Telephone * <input type="text" value="(301) 978-8132"/>	Fax <input type="text"/>

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 <input type="text" value="09/12/2019"/>	<input type="text" value="Global Chief Legal and Policy Officer"/>
By <input type="text" value="Edward S. Knight"/>	<input type="text" value="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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s transaction fees at Equity 7, Section 3, as described further below.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

Presently, the Exchange has a pricing schedule, at Equity 7, Section 3, which sets forth several different fees that it charges for orders in securities priced at \$1 or more per share that remove liquidity from the Exchange and several different credits that it provides for orders in such securities that add liquidity on the Exchange. The pricing schedule also provides a supplemental credit to member organizations that make significant contributions to improving the market during each month. The Exchange proposes to amend this pricing schedule to increase removal activity on the Exchange and to improve overall market quality.

Changes to Remove Fees

The Exchange proposes to largely restate its schedule of charges for member organizations that enter orders that execute on the Exchange. Presently, the Exchange charges a fee of \$0.0029 per share executed in securities in all three Tapes entered by a member organization that accesses 0.065% or more of Consolidated Volume³ during a month. For all other member organizations, the exchange presently charges execution fees of \$0.0030 per share executed. The Exchange proposes to eliminate the \$0.0029 fee and replace it with two tiers of fees. First, the Exchange proposes to charge a fee of \$0.0024 per share executed in securities entered by a member organization that accesses

³ As used in Equity 7, Section 3, the term "Consolidated Volume" means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, the date of the annual reconstitution of the Russell Investments Indexes are excluded from both total Consolidated Volume and the member's trading activity.

0.055% or more of Consolidated Volume during a month and that adds 0.025% or more of Consolidated Volume during a month. Second, the Exchange proposes to charge a fee of \$0.0025 per share executed in securities entered by a member organization that accesses 0.01% or more of Consolidated Volume during the month and that adds 5,000 shares or more to the Exchange during a month. The Exchange proposes to maintain its existing \$0.0030 per share executed fee for all other member organizations.

The purpose of these changes, which will reduce the overall fees that the Exchange charges to member organizations that remove liquidity from the Exchange, is to increase the extent of member organizations' removal activity on the Exchange. Moreover, by tying the availability of the two new, reduced removal fees to the extent of member organizations' liquidity adding activity on the Exchange, the Exchange intends to incentivize member organizations to maintain or increase their liquidity adding activity on the Exchange at the same time that they increase their removal activity, which in turn will help to improve overall market quality.

Changes to Add Credits

Additionally, the Exchange proposes to largely restate its schedule of credits to member organizations that provide displayed liquidity to the Exchange. Presently, the Exchange provides the following credits for member organizations that provide displayed liquidity to the Exchange: (1) a \$0.0030 per share executed credit for quotes/orders entered by member organizations that provide and access 0.20% or more of Consolidated Volume during a month; (2) a \$0.0027 per share executed credit for quotes/orders entered by member organizations that provide and access 0.15% or more of Consolidated Volume during a month; (3) a \$0.0027 per share executed credit for quotes/orders entered

in securities listed on exchanges other than Nasdaq or the NYSE by member organizations that (i) provide a minimum of 1 million shares a day on average in securities listed on Exchanges other than Nasdaq or NYSE and (ii) double the daily average share volume provided in Securities Listed on Exchanges other than Nasdaq or NYSE during the month versus the member organization's daily average share volume provided in Securities Listed on Exchanges other than Nasdaq or NYSE in February 2017⁴; (4) a \$0.0025 per share executed credit for quotes/orders entered by member organizations that provide and access 0.05% or more of Consolidated volume during a month; and (5) a \$0.0023 per share executed credit for all other quotes/orders.

The Exchange proposes to replace those credits with the following: (1) a \$0.0026 per share executed credit for quotes/orders entered by member organizations that provide 0.15% or more of total Consolidated Volume during a month; and (2) a \$0.0024 per share executed credit for quotes/orders entered by member organizations that provide 0.07% or more of total Consolidated Volume during a month. Additionally, the Exchange will continue to provide a \$0.0023 per share executed credit for all other quotes/orders.

The Exchange proposes these changes to its schedule of transaction credits to offset its costs of reducing its transaction fees.

Changes to QMM Program

Earlier this year, the Exchange established a Qualified Market Maker ("QMM") Program and related credits to incentivize member organizations to make significant

⁴ If a member had no activity in February 2017 in Securities Listed on Exchanges other than Nasdaq or NYSE or became a member after February 2017, its February 2017 daily average share volume in Securities Listed on Exchanges other than Nasdaq or NYSE is zero for purposes of determining that member's eligibility for the credit in subsequent months.

contributions to market quality by providing liquidity at the national best bid and offer (“NBBO”) in a large number of securities for a significant portion of the day.⁵ The program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO. Under existing Equity 7, Section 3, a member organization that qualifies as a QMM – i.e., because it quotes at the NBBO at least 10 percent of the time during regular market hours in an average of at least 750 securities per day during a month – is entitled to receive a supplemental credit of \$0.0002 per share executed for executions of displayed orders in securities in Tape A priced at \$1 or more per share that provide liquidity on the Exchange.

The Exchange now proposes to amend the QMM Program in several respects. First, the Exchange proposes to adjust downward the average number of securities for which a member organization must quote at the NBBO during a month to qualify as a QMM as well as the amount of the credit that the Exchange will pay to a member organization that qualifies as a QMM. Whereas presently, a member organization must quote at the NBBO at least 10 percent of the time for an average of at least 750 securities per day to qualify as a QMM, the Exchange proposes to reduce this number to 500 securities per day. Under the proposal, however, a member organization that meets this adjusted criteria will be entitled to a supplemental credit of \$0.0001 per share executed with respect to all of its displayed orders in all securities priced at \$1 or more that provide liquidity, rather than \$0.0002 per share executed with respect to all of its displayed orders only in securities in Tape A that are priced at \$1 or more that provide liquidity.

⁵ See Securities Exchange Act Release No. 34-85862 (May 15, 2019), 84 FR 23112 (May 21, 2019) (SR-Phlx-2019-19).

Additionally, the Exchange proposes to establish a new second tier QMM Program credit for QMMs that quote at the NBBO for the requisite time for a larger average number of securities. Specifically, the Exchange proposes to provide a credit of \$0.0002 per share executed with respect to all displayed orders of a QMM in securities priced at \$1 or more per share that provide liquidity, provided that the QMM quotes the NBBO at least 10 percent of the time during Market Hours in an average of at least 650 securities per day during a month. To the extent that a QMM qualifies for this new credit, it will apply in lieu of the \$0.0001 QMM credit described above.

The Exchange intends for its proposed amendments to its QMM Program to broaden and fortify participation in the Program. The Exchange intends to broaden participation in the Program by lowering the qualifying criteria for QMMs so that member organizations will be able to qualify that either cannot do so now or simply do not wish to quote at the NBBO at least 10 percent of the time for an average of at least 750 securities per day. The proposal intends to fortify existing participation in the Program by easing the burden on existing QMMs to maintain their qualifications as such. That is, member organizations that quote at the NBBO at least 10 percent of the time in as few as an average of 500 securities per day during a month will be able to earn a \$0.0001 per share executed supplemental credit, whereas now, member organizations that engage in the same level of activity would earn no supplemental credit at all. Meanwhile, the \$0.0002 per share executed supplemental credit would be available to member organizations that quote at the NBBO in only an average of 650 securities per day during a month, whereas now, such a credit is available only when member organizations quote at the NBBO for an average of at least 750 securities per day during a month.

b. Statutory Basis

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

The Proposal is Reasonable

The Exchange's proposed change to its schedule of credits and charges is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ...”⁸

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁹

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.¹⁰

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.¹¹ Within the foregoing context, the proposal represents a

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

¹⁰ See Cboe EDGX U.S. Equities Exchange Fee Schedule, available at https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/.

¹¹ The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. In particular, the Exchange notes that such shifts in liquidity and market share occur within the context of market participants’ existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

reasonable attempt by the Exchange to increase its market share relative to its competitors.

Generally, the Exchange's proposed schedule of credits and charges in Equity 7, Section 3 provide increased overall incentives to member organizations to increase their liquidity removal activity on the Exchange, and to do so broadly in orders in securities in all Tapes. An increase in overall liquidity removal activity on the Exchange will, in turn, improve the quality of the Exchange's equity market and increase its attractiveness to existing and prospective participants. The proposed new fees are consistent with the current design of Equity 7, Section 3 because they provide incrementally lower fees in return for increased removal and provision of liquidity on the Exchange. Moreover, the proposed credits will be comparable to, if not favorable to, those that its competitors provide.¹²

The proposed changes to the Exchange's QMM Program is also a reasonable attempt to improve market quality by broadening its QMM Program. By lowering the thresholds for member organizations to qualify as QMMs and to receive supplemental credits for quoting at the NBBO for a significant percentage of the trading day in a significant percentage of securities, the Exchange will encourage new member organizations to become QMMs and help ensure that existing QMMs continue to qualify as such. The Exchange also proposes to broaden the utility of the QMM credits it provides to QMMs by making the credits applicable to displayed orders in all Tapes, rather than only to those in Tape A.

The Proposals are an Equitable Allocation of Credits and Charges

¹² See n. 10, *supra*.

The Exchange believes its proposals will allocate its proposed credits and charges fairly among its market participants. The proposal will provide a member organization with an opportunity to pay lower fees for removing liquidity from the Exchange than it does now. It is equitable for the Exchange to lower its fees to participants whose orders remove liquidity from the Exchange as a means of incentivizing increased liquidity removal activity and to do so broadly in orders in securities in all Tapes. An increase in overall liquidity removal activity on the Exchange will improve the quality of the Exchange's equity market and increase its attractiveness to existing and prospective participants.

Meanwhile, the Exchange believes that it is reasonable to offset the costs of charging lower fees for liquidity removal by lowering its credits for liquidity provision to the Exchange. Although the proposed credits will be lower, in many cases, than the existing credits, and may be harder to achieve, the Exchange believes that the proposed credits will continue to be comparable to liquidity adding rebates provided by its competitors.¹³ That said, the Exchange again notes that those participants that do not wish to receive lower credits are free to shift their order flow to competing venues that offer them higher credits.

Finally, the Exchange believes its proposal to adjust the qualification criteria and supplemental credits applicable to its QMM program is an equitable allocation of proposed credits because the modified qualification criteria will continue to require member organizations to quote significantly at the NBBO for a large number of securities and will continue to contribute to market quality in a meaningful way. In fact, by

¹³

See id.

lowering the thresholds for member organizations to qualify as QMMs and to receive supplemental credits, the Exchange will encourage new member organizations to become QMMs and help ensure that existing QMMs continue to qualify as such, which will further improve market quality.

The Proposal is not Unfairly Discriminatory

The Exchange believes that the proposals are not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for the proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Although net removers of liquidity will benefit most from the proposed lower charges, this result is fair insofar as increased liquidity removal activity will help to improve market quality and the attractiveness of the Exchange's equity market to all existing and prospective participants.

The Exchange's proposal to modify the QMM program is not unfairly discriminatory because any member organization may quote at the NBBO at the level

required by the modified qualification criteria of the QMM Program and, in fact, the modified criteria will render qualification as a QMM easier for member organizations to achieve.

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.

Intramarket Competition

The Exchange does not believe that its proposals will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange will benefit from an increase in the removal of liquidity by those that choose to meet the tier qualification criteria. Members may grow their businesses so that they have the capacity to pay lower removal fees. Moreover, members are free to trade on other venues to the extent they believe that the fees assessed and credits provided are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Moreover, the Exchange's proposal to modify its QMM program will not burden intramarket competition because the QMM Program, as modified, will continue to provide all member organizations with an opportunity to obtain supplemental credits for transactions if they improve the market by providing significant quoting at the NBBO in a large number of securities which the Exchange believes will improve market quality.

By relaxing the qualification criteria, the modifications will make the Program more accessible to new member organizations and easier for existing QMMs to remain in the Program.

Intermarket Competition

Addressing whether the proposed fee could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that its proposed modifications to its schedule of credits and charges will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 32 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed restated schedule of credits and charges and the proposed modifications to the QMM Program are reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange

by volume only has 17-18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 37% of industry volume for the month of July 2019.

In sum, the Exchange intends for the proposed fees and credits and modified QMM Program to increase member incentives to remove liquidity from the Exchange and to contribute to market quality, which is reflective of fierce competition for order flow noted above; however, if the proposed fees and credits are unattractive to market participants, it is likely that the Exchange will either fail to increase its market share or even lose market share as a result. Accordingly, the Exchange does not believe that the proposed new fees and credits will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁴ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2019-35)

September __, 2019

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule, at Equity 7, Section 3

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on September 12, 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 amend the Exchange's transaction fees at Equity 7, Section 3, as described further below.

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

Presently, the Exchange has a pricing schedule, at Equity 7, Section 3, which sets forth several different fees that it charges for orders in securities priced at \$1 or more per share that remove liquidity from the Exchange and several different credits that it provides for orders in such securities that add liquidity on the Exchange. The pricing schedule also provides a supplemental credit to member organizations that make significant contributions to improving the market during each month. The Exchange proposes to amend this pricing schedule to increase removal activity on the Exchange and to improve overall market quality.

Changes to Remove Fees

The Exchange proposes to largely restate its schedule of charges for member organizations that enter orders that execute on the Exchange. Presently, the Exchange charges a fee of \$0.0029 per share executed in securities in all three Tapes entered by a member organization that accesses 0.065% or more of Consolidated Volume³ during a month. For all other member organizations, the exchange presently charges execution

³ As used in Equity 7, Section 3, the term "Consolidated Volume" means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, the date of the annual reconstitution of the Russell Investments Indexes are excluded from both total Consolidated Volume and the member's trading activity.

fees of \$0.0030 per share executed. The Exchange proposes to eliminate the \$0.0029 fee and replace it with two tiers of fees. First, the Exchange proposes to charge a fee of \$0.0024 per share executed in securities entered by a member organization that accesses 0.055% or more of Consolidated Volume during a month and that adds 0.025% or more of Consolidated Volume during a month. Second, the Exchange proposes to charge a fee of \$0.0025 per share executed in securities entered by a member organization that accesses 0.01% or more of Consolidated Volume during the month and that adds 5,000 shares or more to the Exchange during a month. The Exchange proposes to maintain its existing \$0.0030 per share executed fee for all other member organizations.

The purpose of these changes, which will reduce the overall fees that the Exchange charges to member organizations that remove liquidity from the Exchange, is to increase the extent of member organizations' removal activity on the Exchange. Moreover, by tying the availability of the two new, reduced removal fees to the extent of member organizations' liquidity adding activity on the Exchange, the Exchange intends to incentivize member organizations to maintain or increase their liquidity adding activity on the Exchange at the same time that they increase their removal activity, which in turn will help to improve overall market quality.

Changes to Add Credits

Additionally, the Exchange proposes to largely restate its schedule of credits to member organizations that provide displayed liquidity to the Exchange. Presently, the Exchange provides the following credits for member organizations that provide displayed liquidity to the Exchange: (1) a \$0.0030 per share executed credit for quotes/orders entered by member organizations that provide and access 0.20% or more of Consolidated

Volume during a month; (2) a \$0.0027 per share executed credit for quotes/orders entered by member organizations that provide and access 0.15% or more of Consolidated Volume during a month; (3) a \$0.0027 per share executed credit for quotes/orders entered in securities listed on exchanges other than Nasdaq or the NYSE by member organizations that (i) provide a minimum of 1 million shares a day on average in securities listed on Exchanges other than Nasdaq or NYSE and (ii) double the daily average share volume provided in Securities Listed on Exchanges other than Nasdaq or NYSE during the month versus the member organization's daily average share volume provided in Securities Listed on Exchanges other than Nasdaq or NYSE in February 2017⁴; (4) a \$0.0025 per share executed credit for quotes/orders entered by member organizations that provide and access 0.05% or more of Consolidated volume during a month; and (5) a \$0.0023 per share executed credit for all other quotes/orders.

The Exchange proposes to replace those credits with the following: (1) a \$0.0026 per share executed credit for quotes/orders entered by member organizations that provide 0.15% or more of total Consolidated Volume during a month; and (2) a \$0.0024 per share executed credit for quotes/orders entered by member organizations that provide 0.07% or more of total Consolidated Volume during a month. Additionally, the Exchange will continue to provide a \$0.0023 per share executed credit for all other quotes/orders.

The Exchange proposes these changes to its schedule of transaction credits to offset its costs of reducing its transaction fees.

⁴ If a member had no activity in February 2017 in Securities Listed on Exchanges other than Nasdaq or NYSE or became a member after February 2017, its February 2017 daily average share volume in Securities Listed on Exchanges other than Nasdaq or NYSE is zero for purposes of determining that member's eligibility for the credit in subsequent months.

Changes to QMM Program

Earlier this year, the Exchange established a Qualified Market Maker (“QMM”) Program and related credits to incentivize member organizations to make significant contributions to market quality by providing liquidity at the national best bid and offer (“NBBO”) in a large number of securities for a significant portion of the day.⁵ The program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO. Under existing Equity 7, Section 3, a member organization that qualifies as a QMM – *i.e.*, because it quotes at the NBBO at least 10 percent of the time during regular market hours in an average of at least 750 securities per day during a month – is entitled to receive a supplemental credit of \$0.0002 per share executed for executions of displayed orders in securities in Tape A priced at \$1 or more per share that provide liquidity on the Exchange.

The Exchange now proposes to amend the QMM Program in several respects. First, the Exchange proposes to adjust downward the average number of securities for which a member organization must quote at the NBBO during a month to qualify as a QMM as well as the amount of the credit that the Exchange will pay to a member organization that qualifies as a QMM. Whereas presently, a member organization must quote at the NBBO at least 10 percent of the time for an average of at least 750 securities per day to qualify as a QMM, the Exchange proposes to reduce this number to 500 securities per day. Under the proposal, however, a member organization that meets this adjusted criteria will be entitled to a supplemental credit of \$0.0001 per share executed

⁵ See Securities Exchange Act Release No. 34-85862 (May 15, 2019), 84 FR 23112 (May 21, 2019) (SR-Phlx-2019-19).

with respect to all of its displayed orders in all securities priced at \$1 or more that provide liquidity, rather than \$0.0002 per share executed with respect to all of its displayed orders only in securities in Tape A that are priced at \$1 or more that provide liquidity.

Additionally, the Exchange proposes to establish a new second tier QMM Program credit for QMMs that quote at the NBBO for the requisite time for a larger average number of securities. Specifically, the Exchange proposes to provide a credit of \$0.0002 per share executed with respect to all displayed orders of a QMM in securities priced at \$1 or more per share that provide liquidity, provided that the QMM quotes the NBBO at least 10 percent of the time during Market Hours in an average of at least 650 securities per day during a month. To the extent that a QMM qualifies for this new credit, it will apply in lieu of the \$0.0001 QMM credit described above.

The Exchange intends for its proposed amendments to its QMM Program to broaden and fortify participation in the Program. The Exchange intends to broaden participation in the Program by lowering the qualifying criteria for QMMs so that member organizations will be able to qualify that either cannot do so now or simply do not wish to quote at the NBBO at least 10 percent of the time for an average of at least 750 securities per day. The proposal intends to fortify existing participation in the Program by easing the burden on existing QMMs to maintain their qualifications as such. That is, member organizations that quote at the NBBO at least 10 percent of the time in as few as an average of 500 securities per day during a month will be able to earn a \$0.0001 per share executed supplemental credit, whereas now, member organizations that engage in the same level of activity would earn no supplemental credit at all. Meanwhile, the \$0.0002 per share executed supplemental credit would be available to member

organizations that quote at the NBBO in only an average of 650 securities per day during a month, whereas now, such a credit is available only when member organizations quote at the NBBO for an average of at least 750 securities per day during a month.

2. Statutory Basis

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

The Proposal is Reasonable

The Exchange's proposed change to its schedule of credits and charges is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”⁸

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁹

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.¹⁰

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their

⁸ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

¹⁰ See Cboe EDGX U.S. Equities Exchange Fee Schedule, available at https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/.

respective pricing schedules.¹¹ Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its market share relative to its competitors.

Generally, the Exchange's proposed schedule of credits and charges in Equity 7, Section 3 provide increased overall incentives to member organizations to increase their liquidity removal activity on the Exchange, and to do so broadly in orders in securities in all Tapes. An increase in overall liquidity removal activity on the Exchange will, in turn, improve the quality of the Exchange's equity market and increase its attractiveness to existing and prospective participants. The proposed new fees are consistent with the current design of Equity 7, Section 3 because they provide incrementally lower fees in return for increased removal and provision of liquidity on the Exchange. Moreover, the proposed credits will be comparable to, if not favorable to, those that its competitors provide.¹²

The proposed changes to the Exchange's QMM Program is also a reasonable attempt to improve market quality by broadening its QMM Program. By lowering the thresholds for member organizations to qualify as QMMs and to receive supplemental credits for quoting at the NBBO for a significant percentage of the trading day in a significant percentage of securities, the Exchange will encourage new member organizations to become QMMs and help ensure that existing QMMs continue to qualify

¹¹ The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. In particular, the Exchange notes that such shifts in liquidity and market share occur within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

¹² See n. 10, *supra*.

as such. The Exchange also proposes to broaden the utility of the QMM credits it provides to QMMs by making the credits applicable to displayed orders in all Tapes, rather than only to those in Tape A.

The Proposals are an Equitable Allocation of Credits and Charges

The Exchange believes its proposals will allocate its proposed credits and charges fairly among its market participants. The proposal will provide a member organization with an opportunity to pay lower fees for removing liquidity from the Exchange than it does now. It is equitable for the Exchange to lower its fees to participants whose orders remove liquidity from the Exchange as a means of incentivizing increased liquidity removal activity and to do so broadly in orders in securities in all Tapes. An increase in overall liquidity removal activity on the Exchange will improve the quality of the Exchange's equity market and increase its attractiveness to existing and prospective participants.

Meanwhile, the Exchange believes that it is reasonable to offset the costs of charging lower fees for liquidity removal by lowering its credits for liquidity provision to the Exchange. Although the proposed credits will be lower, in many cases, than the existing credits, and may be harder to achieve, the Exchange believes that the proposed credits will continue to be comparable to liquidity adding rebates provided by its competitors.¹³ That said, the Exchange again notes that those participants that do not wish to receive lower credits are free to shift their order flow to competing venues that offer them higher credits.

¹³

See id.

Finally, the Exchange believes its proposal to adjust the qualification criteria and supplemental credits applicable to its QMM program is an equitable allocation of proposed credits because the modified qualification criteria will continue to require member organizations to quote significantly at the NBBO for a large number of securities and will continue to contribute to market quality in a meaningful way. In fact, by lowering the thresholds for member organizations to qualify as QMMs and to receive supplemental credits, the Exchange will encourage new member organizations to become QMMs and help ensure that existing QMMs continue to qualify as such, which will further improve market quality.

The Proposal is not Unfairly Discriminatory

The Exchange believes that the proposals are not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for the proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Although net removers of liquidity will benefit most

from the proposed lower charges, this result is fair insofar as increased liquidity removal activity will help to improve market quality and the attractiveness of the Exchange's equity market to all existing and prospective participants.

The Exchange's proposal to modify the QMM program is not unfairly discriminatory because any member organization may quote at the NBBO at the level required by the modified qualification criteria of the QMM Program and, in fact, the modified criteria will render qualification as a QMM easier for member organizations to achieve.

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.

Intramarket Competition

The Exchange does not believe that its proposals will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange will benefit from an increase in the removal of liquidity by those that choose to meet the tier qualification criteria. Members may grow their businesses so that they have the capacity to pay lower removal fees. Moreover, members are free to trade on other venues to the extent they believe that the fees assessed and credits provided are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Moreover, the Exchange's proposal to modify its QMM program will not burden intramarket competition because the QMM Program, as modified, will continue to provide all member organizations with an opportunity to obtain supplemental credits for transactions if they improve the market by providing significant quoting at the NBBO in a large number of securities which the Exchange believes will improve market quality. By relaxing the qualification criteria, the modifications will make the Program more accessible to new member organizations and easier for existing QMMs to remain in the Program.

Intermarket Competition

Addressing whether the proposed fee could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that its proposed modifications to its schedule of credits and charges will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 32 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order

routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed restated schedule of credits and charges and the proposed modifications to the QMM Program are reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume only has 17-18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 37% of industry volume for the month of July 2019.

In sum, the Exchange intends for the proposed fees and credits and modified QMM Program to increase member incentives to remove liquidity from the Exchange and to contribute to market quality, which is reflective of fierce competition for order flow noted above; however, if the proposed fees and credits are unattractive to market participants, it is likely that the Exchange will either fail to increase its market share or even lose market share as a result. Accordingly, the Exchange does not believe that the proposed new fees and credits will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁴

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2019-35 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.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2019-35. 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-2019-35 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.¹⁵

Eduardo A. Aleman
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq PHLX Rules

* * * * *

EQUITY RULES**Equity 7 Pricing Schedule**

* * * * *

Sections 1 - 2

No change.

**Section 3 Nasdaq PSX Fees
Port Fees[†]**

No change.

Order Execution and Routing

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

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

Charge to member organization entering order that executes in Nasdaq PSX:

\$0.0024 per share executed in securities entered by a member organization that accesses 0.055% or more of Consolidated Volume during the month and adds 0.025% or more of Consolidated Volume during the month

\$0.0025 per share executed in securities entered by a member organization that accesses 0.01% or more of Consolidated Volume during the month and adds 5,000 shares or more to the Exchange during the month

[\$0.0029 per share executed in Nasdaq-Listed Securities entered by a member organization that accesses 0.065% or more of Consolidated Volume during the month]

[\$0.0029 per share executed in NYSE-Listed Securities entered by a member organization that accesses 0.065% or more of Consolidated Volume during the month]

[\$0.0029 per share executed in Securities Listed on Exchanges other than Nasdaq and NYSE entered by a member organization that accesses 0.065% or more of Consolidated Volume during the month]

\$0.0030 per share executed for all other member organizations

Credit to member organization providing liquidity through the Nasdaq PSX System:

Displayed Quote/Order:

[\$0.0030 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.20% or more of Consolidated Volume during the month]

\$0.0026[7] per share executed for Quotes/Orders entered by a member organization that provides [and accesses]0.15% or more of Consolidated Volume during the month

[\$0.0027 per share executed for Quotes/Orders entered in Securities Listed on Exchanges other than Nasdaq or NYSE by a member organization that (1) provides a minimum of 1 million shares a day on average in Securities Listed on Exchanges other than Nasdaq or NYSE and (2) doubles the daily average share volume provided in

Securities Listed on Exchanges other than Nasdaq or NYSE during the month versus the member organization's daily average share volume provided in Securities Listed on Exchanges other than Nasdaq or NYSE in February 2017. If a member had no activity in February 2017 in Securities Listed on Exchanges other than Nasdaq or NYSE or became a member after February 2017, its February 2017 daily average share volume in Securities Listed on Exchanges other than Nasdaq or NYSE would be zero for purposes of determining that member's eligibility for the credit in subsequent months.]

\$0.002[5]4 per share executed for Quotes/Orders entered by a member organization that provides [and accesses]0.07[5]% or more of Consolidated Volume during the month

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

Non-Displayed Order Charges and Credits: \$0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity

\$0.0000 per share executed credit for other non-displayed orders that provide liquidity

(2) Fees for Routing of Orders in All Securities

No change.

(b) No change.

(c) Qualified Market Maker ("QMM") Program

- (1) A member may be designated as a QMM if the member organization (i) quotes at the NBBO at least 10% of the time during Market Hours in an average of at least [750]500 securities per day during a month.[For purposes of this rule, a member organization is considered to be quoting at the NBBO if one of its MPIDs has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, the Exchange will determine the number of securities in which each of a member organization's MPIDs satisfied the

10% NBBO requirement. The Exchange will aggregate all of a member organization's MPIDs to determine the number of securities for purposes of the 10% NBBO requirement. To qualify for QMM designation, the member organization must meet the requirement for an average of 750 securities per day over the course of the month.]

- (2) The Exchange will provide a credit of \$0.000[2]1 per share executed with respect to all displayed orders of a QMM in securities [in Tape A]priced at \$1 or more per share that provide liquidity. Such credit will be in addition to any credit provided under Equity 7, Section 3.
- (3) In lieu of the credit described in subparagraph (c)(2), the Exchange will provide a credit of \$0.0002 per share executed with respect to all displayed orders of a QMM in securities priced at \$1 or more per share that provide liquidity, provided that the QMM quotes the NBBO at least 10% of the time during Market Hours in an average of at least 650 securities per day during a month. Such credit will be in addition to any credit provided under Equity 7, Section 3.
- (4) For purposes of this rule, a member organization is considered to be quoting at the NBBO if one of its MPIDs has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, the Exchange will determine the number of securities in which each of a member organization's MPIDs satisfied the 10% NBBO requirement. The Exchange will aggregate all of a member organization's MPIDs to determine the number of securities for purposes of the 10% NBBO requirement. To qualify for QMM designation, the member organization must meet the applicable requirement for an average number of securities per day over the course of the month.

* * * * *