

*Required fields are shown with yellow backgrounds and asterisks.*

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

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

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

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

**Description**

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

Proposal to add the Consolidated Audit Trail industry member compliance rules to the list of minor rule violations in its rulebook.

**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 \* Sun Last Name \* Kim

Title \* Associate General Counsel

E-mail \* sun.kim@nasdaq.com

Telephone \* (646) 420-7816 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 08/13/2020 EVP and Chief Legal Officer

By John Zecca

(Name \*)

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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

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

Add Remove View

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

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

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

Add Remove View

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) Nasdaq PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<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 add the Consolidated Audit Trail (“CAT”) industry member compliance rules to the list of minor rule violations in its rulebook.

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) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

(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 25, 2019. 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:

Sun Kim  
Associate General Counsel  
Nasdaq, Inc.

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

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

646-420-7816

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

a. Purpose

The Exchange proposes to add Phlx's CAT industry member compliance rules (the "CAT Compliance Rules") to the list of minor rule violations in IM-9216, in Options 11, and in its Equity Minor Rule Violations. This proposal is based upon the Financial Industry Regulatory Authority, Inc. ("FINRA") filing to amend FINRA Rule 9217 in order to add FINRA's corresponding CAT Compliance Rules to FINRA's list of rules that are eligible for minor rule violation plan treatment.<sup>3</sup>

Proposed Rule Change

The Exchange adopted the CAT Compliance Rules in General 7 in order to implement the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>4</sup> The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Exchange Act,<sup>5</sup> and each Plan Participant accordingly has adopted the same compliance rules as the Exchange's General 7. The common compliance rules adopted by each Plan Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which

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<sup>3</sup> See Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768 (May 20, 2020) (SR-FINRA-2020-013); see also Release No. 89123 (June 23, 2020), 85 FR 39016 (June 29, 2020) (SR-NYSE-2020-51).

<sup>4</sup> See Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR-Phlx-2017-07) (Order Approving Proposed Rule Changes To Adopt Consolidated Audit Trail Compliance Rules).

<sup>5</sup> 17 CFR 242.613.

broadly calls for industry members to record and report timely and accurately customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

IM-9216 sets forth the list of rules specific to the Exchange's trading floor under which a member, member organization, or any partner, officer, director or person employed by or associated with any member organization (hereinafter, "associated person") may be subject to a fine. Exchange Rule 9216(b) permits the Exchange to impose a fine (not to exceed \$2,500) on any member, member organization, or associated person with respect to any rule listed under IM-9216. The Exchange proposes to amend IM-9216 to add the CAT Compliance Rules in General 7 to the list of rules in IM-9216 eligible for disposition pursuant to a minor fine under Rule 9216(b). In addition, Options 11 sets forth the minor rule violation plan ("MRVP") for members and member organizations on the Exchange's options market. Accordingly, the Exchange proposes to make conforming changes in Options 11 to add the CAT Compliance Rules to the list of rules therein, and specify that for failures to comply with the Consolidated Audit Trail Compliance Rule requirements under General 7, the Exchange may impose a minor rule violation fine of up to \$2,500. Lastly, the Exchange proposes to make similar amendments to the Equity Minor Rule Violations, which sets forth the MRVP for members and member organizations on the Exchange's equities market. In particular, the Exchange proposes to add General 7 to the list of rules in the Equity Minor Rule Violations and provide that failures to comply with the CAT Compliance Rule

requirements may be subject to fines of up to \$2,500.<sup>6</sup>

The Exchange is coordinating with FINRA and other Plan Participants to promote harmonized and consistent enforcement of all the Plan Participants' CAT Compliance Rules. The Commission recently approved a Rule 17d-2 Plan under which the regulation of CAT Compliance Rules will be allocated among Plan Participants to reduce regulatory duplication for industry members that are members of more than one Participant ("common members").<sup>7</sup> Under the Rule 17d-2 Plan, the regulation of CAT Compliance Rules with respect to common members that are members of FINRA is allocated to FINRA. Similarly, under the Rule 17d-2 Plan, responsibility for common members of multiple other Plan Participants and not a member of FINRA will be allocated among those other Plan Participants, including to the Exchange. For those non-common members who are allocated to the Exchange pursuant to the Rule 17d-2 Plan, the Exchange and FINRA entered into a Regulatory Services Agreement ("RSA") pursuant to which FINRA will conduct surveillance, investigation, examination, and enforcement activity in connection with the CAT Compliance Rules on the Exchange's behalf. We

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<sup>6</sup> FINRA's maximum fine for minor rule violations under FINRA Rule 9216(b) is \$2,500. The Exchange will apply an identical maximum fine amount for eligible violations of General 7 to achieve consistency with FINRA and also to amend its MRVP to include such fines. Like FINRA, the Exchange would be able to pursue a fine greater than \$2,500 for violations of General 7 in a regular disciplinary proceeding or an acceptance, waiver, and consent ("AWC") under the Rule 9000 Series as appropriate. Any fine imposed in excess of \$2,500 or not otherwise covered by Rule 19d-1(c)(2) of the Act would be subject to prompt notice to the Commission pursuant to Rule 19d-1 under the Act. As noted below, in assessing the appropriateness of a minor rule fine with respect to CAT Compliance Rules, the Exchange will be guided by the same factors that FINRA utilizes. See text accompanying notes 8-9, infra.

<sup>7</sup> See Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020) (File No. 4-618).

expect that the other exchanges would be entering into a similar RSA.

FINRA, in connection with its proposed amendment to FINRA Rule 9217 to make FINRA's CAT Compliance Rules MRVP eligible, has represented that it will apply the minor fines for CAT Compliance Rules in the same manner that FINRA has for its similar existing audit trail-related rules.<sup>8</sup> Accordingly, in order to promote regulatory consistency, the Exchange plans to do the same. Specifically, application of a minor rule fine with respect to the CAT Compliance Rules will be guided by the same factors that FINRA referenced in its filing. However, more formal disciplinary proceedings may be warranted instead of minor rule dispositions in certain circumstances such as where violations prevent regulatory users of the CAT from performing their regulatory functions. Where minor rule dispositions are appropriate, the following factors help guide the determination of fine amounts:

- Total number of reports that are not submitted or submitted late;
- The timeframe over which the violations occur;
- Whether violations are batched;
- Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures;
- Whether the firm has taken remedial measures to correct the violations;
- Prior minor rule violations within the past 24 months;
- Collateral effects that the failure has on customers; and
- Collateral effects that the failure has on the Exchange's ability to perform its regulatory function.<sup>9</sup>

Upon effectiveness of this rule change, the Exchange will publish a regulatory alert notifying its members, member organizations, and associated persons of the rule

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<sup>8</sup> See SR-FINRA-2020-013; see also FINRA Notice to Members 04-19 (March 2004) (providing specific factors used to inform dispositions for violations of OATS reporting rules).

<sup>9</sup> See id.

change and the specific factors that will be considered in connection with assessing minor rule fines described above.

For the foregoing reasons, the Exchange believes that the proposed rule change will result in a coordinated, harmonized approach to CAT compliance rule enforcement across Plan Participants that will be consistent with the approach FINRA has taken with the CAT rules.

b. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through an AWC if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).



carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Rather, the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the CAT Compliance Rules in General 7 where a more formal disciplinary action may not be warranted or appropriate consistent with the approach of other Plan Participants for the same conduct.

The Exchange further believes that the proposed amendments to IM-9216, Options 11, and the Equity Minor Rule Violations are consistent with Section 6(b)(6) of the Act,<sup>12</sup> which provides that a member, member organization, or associated person shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of General 7 pursuant to the Exchange's rules.

The Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of a member, member organization, or associated

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<sup>12</sup> 15 U.S.C. 78f(b)(6).

person, consistent with Sections 6(b)(7) and 6(d) of the Act.<sup>13</sup> IM-9216, Options 11, and the Equity Minor Rule Violations do not preclude a member, member organization, or associated person from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with making the CAT Compliance Rules in General 7 eligible for a minor rule fine disposition, thereby strengthening the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2)<sup>14</sup> of the Exchange Act.

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

The Exchange requests the Commission to find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after its publication in the Federal Register in order to allow the change to take effect in line with

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<sup>13</sup> 15 U.S.C. 78f(b)(7) and 78f(d).

<sup>14</sup> 15 U.S.C. 78f(b)(2).

the commencement of the first phase of industry member reporting to CAT. The Exchange believes accelerated approval will facilitate more efficient, effective, and coordinated enforcement of the CAT Compliance Rules as the first phase of industry member reporting takes effect. Further, the Exchange believes accelerated approval is appropriate given the proposed rule change is consistent with the proposals submitted by FINRA and NYSE, as well as FINRA's approach to MRVP dispositions for the CAT Compliance Rules. As noted above, the Exchange proposes to apply minor fines for the CAT Compliance Rules in the same manner as FINRA.

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

The proposed rule change is based on SR-FINRA-2020-13 and NYSE-2020-51 to make the FINRA and NYSE CAT Compliance Rules eligible for minor rule fines under their respective Rule 9217.

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-2020-40)

August \_\_, 2020

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change to Add the Consolidated Audit Trail Industry Member Compliance Rules to the List of Minor Rule Violations in Its Rulebook

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 13, 2020, 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 add the Consolidated Audit Trail (“CAT”) industry member compliance rules to the list of minor rule violations in its rulebook.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, 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

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

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

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

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

1. Purpose

The Exchange proposes to add Phlx's CAT industry member compliance rules (the "CAT Compliance Rules") to the list of minor rule violations in IM-9216, in Options 11, and in its Equity Minor Rule Violations. This proposal is based upon the Financial Industry Regulatory Authority, Inc. ("FINRA") filing to amend FINRA Rule 9217 in order to add FINRA's corresponding CAT Compliance Rules to FINRA's list of rules that are eligible for minor rule violation plan treatment.<sup>3</sup>

Proposed Rule Change

The Exchange adopted the CAT Compliance Rules in General 7 in order to implement the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>4</sup> The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Exchange Act,<sup>5</sup> and each Plan Participant accordingly has adopted the same compliance rules as the Exchange's General 7. The common compliance rules adopted by each Plan Participant are designed

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<sup>3</sup> See Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768 (May 20, 2020) (SR-FINRA-2020-013); see also Release No. 89123 (June 23, 2020), 85 FR 39016 (June 29, 2020) (SR-NYSE-2020-51).

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<sup>5</sup> 17 CFR 242.613.

to require industry members to comply with the provisions of the CAT NMS Plan, which broadly calls for industry members to record and report timely and accurately customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

IM-9216 sets forth the list of rules specific to the Exchange's trading floor under which a member, member organization, or any partner, officer, director or person employed by or associated with any member organization (hereinafter, "associated person") may be subject to a fine. Exchange Rule 9216(b) permits the Exchange to impose a fine (not to exceed \$2,500) on any member, member organization, or associated person with respect to any rule listed under IM-9216. The Exchange proposes to amend IM-9216 to add the CAT Compliance Rules in General 7 to the list of rules in IM-9216 eligible for disposition pursuant to a minor fine under Rule 9216(b). In addition, Options 11 sets forth the minor rule violation plan ("MRVP") for members and member organizations on the Exchange's options market. Accordingly, the Exchange proposes to make conforming changes in Options 11 to add the CAT Compliance Rules to the list of rules therein, and specify that for failures to comply with the Consolidated Audit Trail Compliance Rule requirements under General 7, the Exchange may impose a minor rule violation fine of up to \$2,500. Lastly, the Exchange proposes to make similar amendments to the Equity Minor Rule Violations, which sets forth the MRVP for members and member organizations on the Exchange's equities market. In particular, the Exchange proposes to add General 7 to the list of rules in the Equity Minor Rule Violations and provide that failures to comply with the CAT Compliance Rule

requirements may be subject to fines of up to \$2,500.<sup>6</sup>

The Exchange is coordinating with FINRA and other Plan Participants to promote harmonized and consistent enforcement of all the Plan Participants' CAT Compliance Rules. The Commission recently approved a Rule 17d-2 Plan under which the regulation of CAT Compliance Rules will be allocated among Plan Participants to reduce regulatory duplication for industry members that are members of more than one Participant ("common members").<sup>7</sup> Under the Rule 17d-2 Plan, the regulation of CAT Compliance Rules with respect to common members that are members of FINRA is allocated to FINRA. Similarly, under the Rule 17d-2 Plan, responsibility for common members of multiple other Plan Participants and not a member of FINRA will be allocated among those other Plan Participants, including to the Exchange. For those non-common members who are allocated to the Exchange pursuant to the Rule 17d-2 Plan, the Exchange and FINRA entered into a Regulatory Services Agreement ("RSA") pursuant to which FINRA will conduct surveillance, investigation, examination, and enforcement activity in connection with the CAT Compliance Rules on the Exchange's behalf. We

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<sup>6</sup> FINRA's maximum fine for minor rule violations under FINRA Rule 9216(b) is \$2,500. The Exchange will apply an identical maximum fine amount for eligible violations of General 7 to achieve consistency with FINRA and also to amend its MRVP to include such fines. Like FINRA, the Exchange would be able to pursue a fine greater than \$2,500 for violations of General 7 in a regular disciplinary proceeding or an acceptance, waiver, and consent ("AWC") under the Rule 9000 Series as appropriate. Any fine imposed in excess of \$2,500 or not otherwise covered by Rule 19d-1(c)(2) of the Act would be subject to prompt notice to the Commission pursuant to Rule 19d-1 under the Act. As noted below, in assessing the appropriateness of a minor rule fine with respect to CAT Compliance Rules, the Exchange will be guided by the same factors that FINRA utilizes. See text accompanying notes 8-9, infra.

<sup>7</sup> See Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020) (File No. 4-618).

expect that the other exchanges would be entering into a similar RSA.

FINRA, in connection with its proposed amendment to FINRA Rule 9217 to make FINRA's CAT Compliance Rules MRVP eligible, has represented that it will apply the minor fines for CAT Compliance Rules in the same manner that FINRA has for its similar existing audit trail-related rules.<sup>8</sup> Accordingly, in order to promote regulatory consistency, the Exchange plans to do the same. Specifically, application of a minor rule fine with respect to the CAT Compliance Rules will be guided by the same factors that FINRA referenced in its filing. However, more formal disciplinary proceedings may be warranted instead of minor rule dispositions in certain circumstances such as where violations prevent regulatory users of the CAT from performing their regulatory functions. Where minor rule dispositions are appropriate, the following factors help guide the determination of fine amounts:

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- Whether the firm has taken remedial measures to correct the violations;
- Prior minor rule violations within the past 24 months;
- Collateral effects that the failure has on customers; and
- Collateral effects that the failure has on the Exchange's ability to perform its regulatory function.<sup>9</sup>

Upon effectiveness of this rule change, the Exchange will publish a regulatory alert notifying its members, member organizations, and associated persons of the rule

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<sup>8</sup> See SR-FINRA-2020-013; see also FINRA Notice to Members 04-19 (March 2004) (providing specific factors used to inform dispositions for violations of OATS reporting rules).

<sup>9</sup> See id.



change and the specific factors that will be considered in connection with assessing minor rule fines described above.

For the foregoing reasons, the Exchange believes that the proposed rule change will result in a coordinated, harmonized approach to CAT compliance rule enforcement across Plan Participants that will be consistent with the approach FINRA has taken with the CAT rules.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through an AWC if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Rather, the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the CAT Compliance Rules in General 7 where a more formal disciplinary action may not be warranted or appropriate consistent with the approach of other Plan Participants for the same conduct.

The Exchange further believes that the proposed amendments to IM-9216, Options 11, and the Equity Minor Rule Violations are consistent with Section 6(b)(6) of the Act,<sup>12</sup> which provides that a member, member organization, or associated person shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of General 7 pursuant to the Exchange's rules.

The Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of a member, member organization, or associated

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<sup>12</sup> 15 U.S.C. 78f(b)(6).

person, consistent with Sections 6(b)(7) and 6(d) of the Act.<sup>13</sup> IM-9216, Options 11, and the Equity Minor Rule Violations do not preclude a member, member organization, or associated person from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with making the CAT Compliance Rules in General 7 eligible for a minor rule fine disposition, thereby strengthening the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

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

No written comments were either solicited or received.

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

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

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<sup>13</sup> 15 U.S.C. 78f(b)(7) and 78f(d).

#### 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-2020-40 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-2020-40. 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-2020-40 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>14</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**Nasdaq PHLX LLC Rules**

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**Rule 9000. Code of Procedure**

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**9216. Acceptance, Waiver, and Consent; Violation of Floor Procedure Advices; Violation of Order and Decorum Regulations**

(a) No change.

**(b) Procedure for Violation of Floor Procedure Advices Other than Regulations Concerning Violation of Order, Decorum, Health, Safety and Welfare on the Exchange**

(1) The following process is followed for fines assessed under a plan pursuant to SEC Rule 19d-1(c)(2):

(A) Notwithstanding Rule 9211, the Exchange Review Council may, subject to the requirements set forth in subparagraphs (b)(1)(B) through (b)(1)(E) and in SEC Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) on any member, member organization, or any partner, officer, director or person employed by or associated with any member organization with respect to any rule listed in IM-9216. If the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and if the member, member organization or associated person does not dispute the violation, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may prepare and request that the member, member organization or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's, member organization's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Exchange Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by the Phlx Regulation Department staff.

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**IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)**

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• General 7 – Failure to comply with the Consolidated Audit Trail Compliance Rule requirements (fines up to \$2,500)

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**Options 11 Minor Rule Plan Violations**

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**Section 14. Failure to Comply with the Consolidated Audit Trail Compliance Rule Requirements**

For failures to comply with the Consolidated Audit Trail Compliance Rule requirements under General 7, the Exchange may impose a minor rule violation fine of up to \$2,500.

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**Equity Minor Rule Violations**

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**General 7 – Failure to comply with the Consolidated Audit Trail Compliance Rule requirements (fines up to \$2,500).**

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