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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2020 - * 45
Amendment No. (req. for Amendments *)

Filing by Nasdaq PHLX LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☑ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Pilot ☐ Extension of Time Period for Commission Action * ☐ Date Expires *

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

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

A proposal to amend the Exchanges transaction credits 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 * Brett Last Name * Kitt
Title * AVP, Principal Associate General Counsel
E-mail * brett.kitt@nasdaq.com
Telephone * (301) 978-8132 Fax

Signature

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

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

Date 09/10/2020
By John Zecca
(Name *)

(Title *)
EVP and Chief Legal Counsel

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.

john.zecca@nasdaq.com

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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 credits 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 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:

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

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

a. Purpose

The Exchange proposes to revise its schedule of order execution and routing credits, at Equity 7, Section 3, to add three new credits for member organizations with non-displayed orders that provide liquidity to the Exchange. Presently, the Exchange already provides one such credit – a $0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity. For all other non-display orders that provide liquidity, it presently provides no credits. Going forward, the Exchange proposes to add the following new credits for member organizations with non-displayed orders that provide liquidity to the Exchange:

- A $0.0004 per share executed credit for orders entered by a member organization that provides 0.01% or more of total Consolidated Volume [3] during the month through non-displayed orders (other than midpoint orders) that provide liquidity;
- A $0.0007 per share executed credit for orders entered by a member organization that provides 0.02% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity; and
- A $0.0012 per share executed credit for orders entered by a member organization that provides 0.05% or more of total Consolidated Volume

[3] 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. See Equity 7, Section 3.

during the month through non-displayed orders (other than midpoint orders) that provide liquidity.

The Exchange believes that the addition of these three new credits will incentivize member organizations to add non-displayed liquidity to the Exchange. Moreover, the proposal broadens the availability of credits to member organizations that add non-displayed liquidity other than midpoint pegging orders. In incentivizing member organizations to increase the extent of their non-displayed liquidity adding activity on the Exchange, the Exchange intends to improve the overall quality and attractiveness of the PSX market.

Impact of the Changes

Those participants that act as significant providers of non-displayed liquidity to the Exchange will benefit directly from the proposed addition of the new credits. Other participants will also benefit from the new credits insofar as any increase in liquidity adding activity on the Exchange will improve the overall quality of the market, to the benefit of all member organizations.

The Exchange notes that its proposal is not otherwise targeted at or expected to be limited in its applicability to a specific segment of market participants nor will it apply differently to different types of market participants.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in

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4 15 U.S.C. 78f(b).

5 15 U.S.C. 78f(b)(4) and (5).

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 also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal is Reasonable

The Exchange's proposed changes to its schedule of credits are 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'…."[6]

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

6 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 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."[7]

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, and it represents a small percentage of the overall market. 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.

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. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange has designed its proposed schedule of credits to provide increased overall incentives to members to increase their liquidity adding activity on the Exchange. An increase in liquidity adding activity on the Exchange will, in turn, improve the quality of the PSX market and increase its attractiveness to existing and prospective participants.

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

The Exchange notes that those participants that are dissatisfied with the proposed new credits are free to shift their order flow to competing venues that offer them higher credits.

The Proposal is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its proposed new credits fairly among its market participants. It is equitable for the Exchange to increase its credits to participants whose orders add liquidity to the Exchange as a means of incentivizing increased liquidity adding activity on the Exchange as well as to base the receipt of the credits on a member organization engaging in a threshold volume of liquidity adding activity on the Exchange. An increase in overall liquidity adding activity on the Exchange will improve the quality of the PSX market and increase its attractiveness to existing and prospective participants.

Any participant that is dissatisfied with the proposed new credits is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

The Proposed Credit is not Unfairly Discriminatory

The Exchange believes that the proposal is 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.

To the extent that the proposed changes succeed in increasing liquidity adding activity on the Exchange, this will improve market quality and the attractiveness of the PSX market, to the benefit of all existing and prospective participants.

Moreover, any participant that is dissatisfied with the proposed new credits is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

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 proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all member organizations of the Exchange will benefit from any increase in market activity that the proposal effectuates. Member organizations may grow or modify their businesses so that they can receive the higher credits. Moreover, member organizations are free to trade on other venues to the extent they believe that the 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.

Intermarket Competition

Addressing whether the proposal 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 will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition from a multitude of other live exchanges and off-exchange venues. 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 credits 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 credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credits change in this market may impose any burden on competition is extremely limited.

The proposed new credits 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 has less than 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 comprises approximately 44% of industry volume.

The Exchange intends for the proposed changes to its schedule of credits to increase member organization incentives to engage in the addition of non-displayed liquidity on the Exchange. These changes are procompetitive and reflective of the Exchange's efforts to make it an attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of member organizations 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,[8] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-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.

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[8] 15 U.S.C. 78s(b)(3)(A)(ii).

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-2020-45)

September __, 2020

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Credits 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 10, 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 amend the Exchange's transaction credits at Equity 7, Section 3, as described further below. 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 received on the proposed rule change. The text of these statements may be examined at

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 revise its schedule of order execution and routing credits, at Equity 7, Section 3, to add three new credits for member organizations with non-displayed orders that provide liquidity to the Exchange. Presently, the Exchange already provides one such credit – a $0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity. For all other non-display orders that provide liquidity, it presently provides no credits. Going forward, the Exchange proposes to add the following new credits for member organizations with non-displayed orders that provide liquidity to the Exchange:

- A $0.0004 per share executed credit for orders entered by a member organization that provides 0.01% or more of total Consolidated Volume [3] during the month through non-displayed orders (other than midpoint orders) that provide liquidity;
- A $0.0007 per share executed credit for orders entered by a member organization that provides 0.02% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity; and

3 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. See Equity 7, Section 3.

- A $0.0012 per share executed credit for orders entered by a member organization that provides 0.05% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity.

The Exchange believes that the addition of these three new credits will incentivize member organizations to add non-displayed liquidity to the Exchange. Moreover, the proposal broadens the availability of credits to member organizations that add non-displayed liquidity other than midpoint pegging orders. In incentivizing member organizations to increase the extent of their non-displayed liquidity adding activity on the Exchange, the Exchange intends to improve the overall quality and attractiveness of the PSX market.

Impact of the Changes

Those participants that act as significant providers of non-displayed liquidity to the Exchange will benefit directly from the proposed addition of the new credits. Other participants will also benefit from the new credits insofar as any increase in liquidity adding activity on the Exchange will improve the overall quality of the market, to the benefit of all member organizations.

The Exchange notes that its proposal is not otherwise targeted at or expected to be limited in its applicability to a specific segment of market participants nor will it apply differently to different types of market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] 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 also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal is Reasonable

The Exchange's proposed changes to its schedule of credits are 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

4 15 U.S.C. 78f(b).

5 15 U.S.C. 78f(b)(4) and (5).

monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[6]

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."[7]

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, and it represents a small percentage of the overall market. 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.

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. Within the foregoing context, the proposal represents a

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6 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)).

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

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

The Exchange has designed its proposed schedule of credits to provide increased overall incentives to members to increase their liquidity adding activity on the Exchange. An increase in liquidity adding activity on the Exchange will, in turn, improve the quality of the PSX market and increase its attractiveness to existing and prospective participants.

The Exchange notes that those participants that are dissatisfied with the proposed new credits are free to shift their order flow to competing venues that offer them higher credits.

The Proposal is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its proposed new credits fairly among its market participants. It is equitable for the Exchange to increase its credits to participants whose orders add liquidity to the Exchange as a means of incentivizing increased liquidity adding activity on the Exchange as well as to base the receipt of the credits on a member organization engaging in a threshold volume of liquidity adding activity on the Exchange. An increase in overall liquidity adding activity on the Exchange will improve the quality of the PSX market and increase its attractiveness to existing and prospective participants.

Any participant that is dissatisfied with the proposed new credits is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

The Proposed Credit is not Unfairly Discriminatory

The Exchange believes that the proposal is 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.

To the extent that the proposed changes succeed in increasing liquidity adding activity on the Exchange, this will improve market quality and the attractiveness of the PSX market, to the benefit of all existing and prospective participants.

Moreover, any participant that is dissatisfied with the proposed new credits is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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.

<u>Intramarket Competition</u>

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all member organizations of the Exchange will benefit from any increase in market activity that the proposal effectuates. Member organizations may grow or modify their businesses so that they can receive the higher credits. Moreover, member organizations are free to trade on other venues to the extent they believe that the 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.

Intermarket Competition

Addressing whether the proposal 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 will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition from a multitude of other live exchanges and off-exchange venues. 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 credits 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 credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credits change in this market may impose any burden on competition is extremely limited.

The proposed new credits 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 has less than 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 comprises approximately 44% of industry volume.

The Exchange intends for the proposed changes to its schedule of credits to increase member organization incentives to engage in the addition of non-displayed liquidity on the Exchange. These changes are procompetitive and reflective of the Exchange's efforts to make it an attractive and vibrant venue to market participants.

In sum, if the changes proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of member organizations 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.[8]

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-2020-45 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.

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8 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2020-45. 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-2020-45 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.[9]

J. Matthew DeLesDernier
Assistant Secretary

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9 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is <u>underlined</u>.

Nasdaq PHLX Rules

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EQUITY 7 PRICING SCHEDULE

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Section 3 Nasdaq PSX Fees

Port Fees †

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† **Fees are assessed in full month increments under this section, and thus are not prorated.**

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
	$0.0030 per share executed for all other member organizations
Credit to member organization providing liquidity through the Nasdaq PSX System:	
Displayed Quote/Order:	$0.0026 per share executed for Quotes/Orders entered by a member organization that provides 0.10% or more of total Consolidated Volume during the month
	$0.0024 per share executed for Quotes/Orders entered by a member organization that provides 0.07% or more of total Consolidated Volume during the month
	$0.0020 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
	$0.0004 per share executed credit for orders entered by a member organization that provides 0.01% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity
	$0.0007 per share executed credit for orders entered by a member organization that provides 0.02% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity
	$0.0012 per share executed credit for orders entered by a member

	<u>organization that provides 0.05% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity</u>
	$0.0000 per share executed credit for other non-displayed orders that provide liquidity

(2) Fees for Routing of Orders in All Securities

Charge to member organization entering PSTG or PSCN order that executes in a venue other than the Nasdaq PSX System:	$0.0030 per share executed at NYSE
	$0.0000 per share executed at Nasdaq BX
	$0.0030 per share executed in other venues
Charge to member organization entering PMOP order that executes in a venue other than the Nasdaq PSX System:	$0.0035 per share executed at NYSE
	$0.0035 per share executed at venues other than NYSE
Charge to member organization entering PTFY order that executes in a venue other than the Nasdaq PSX System:	$0.0030 per share executed at NYSE
	$0.0007 per share executed at venues other than NYSE, Nasdaq or Nasdaq BX
	$0.0030 per share executed at Nasdaq
	$0.0000 per share executed at Nasdaq BX
Charge to member organization entering PCRT order that executes in a venue other than the Nasdaq PSX System:	$0.0030 per share executed at Nasdaq
	$0.0000 per share executed at Nasdaq BX

Charge to member organization entering XDRK order that executes in a venue other than the Nasdaq PSX System:	$0.0007 per share executed
Charge to member organization entering XCST order that executes in a venue other than the Nasdaq PSX System:	$0.0000 per share executed at Nasdaq BX
	$0.0007 per share for shares executed at a venue other than Nasdaq BX
Charge or credit to member organization entering SCAR order that executes in a venue other than the Nasdaq PSX System:	Charge of $0.00295 per share for orders executed at Nasdaq
	Credit of $0.0025 per share for orders executed at Nasdaq BX in securities in Tapes A and C
	Credit of $0.0025 per share for orders executed at Nasdaq BX in Tape B securities

(b) 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 less than $1 per share:

Charge to member organization entering order that executes in Nasdaq PSX:	0.20% of the total transaction cost
Credit to member organization providing liquidity through the Nasdaq PSX System:	$0
Charge to member organization entering order that executes in a venue other than the Nasdaq PSX System:	0.3% of the total transaction cost

(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 400 securities per day during a month.

(2) The Exchange will provide a credit of $0.0001 per share executed with respect to all displayed orders of a QMM in securities 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 500 securities per day during a month. Such credit will be in addition to any credit provided under Equity 7, Section 3.

(4) In lieu of the credits described in subparagraphs (c)(2) and (c)(3), the Exchange will provide a credit of $0.0003 per share executed in Tape A securities and a credit of $0.0002 per share executed in Tape B and Tape C securities 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 provides 0.12% or more of total Consolidated Volume during the month and quotes the NBBO at least 10% of the time during Market Hours in an average of at least 850 securities per day during a month. Such credit will be in addition to any credit provided under Equity 7, Section 3.

(5) 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.

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