OMB APPROVAL
OMB Number: 3235-0045 Estimated average burden hours per response............38

Required fields are shown with yellow backgrounds and asterisks.

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

File No.* SR - 2021 - * 47
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 Equity 7, Section 3 to adopt an Enhanced Market Quality Program and a related credit.

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 * Nikolai Last Name * Utochkin

Title * Associate General Counsel

E-mail * Nikolai.Utochkin@nasdaq.com

Telephone * (301) 978-8029 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 08/12/2021

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 Equity 7, Section 3 to adopt an Enhanced Market Quality Program and a related credit, 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 November 5, 2020. 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
Associate Vice President
Principal Associate General Counsel
Nasdaq, Inc.
(301) 978-8132

or

---

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

2 17 CFR 240.19b-4.

Nikolai Utochkin
Associate General Counsel
Nasdaq, Inc.
(301) 978-8029

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

a. Purpose

The purpose of the proposed rule change is to amend Equity 7, Section 3 to adopt an Enhanced Market Quality Program and a related credit.

The Enhanced Market Quality Program is intended to provide supplemental incentives to member organizations that meet certain quality standards in acting as market makers for securities on the Exchange by incentivizing such member organizations to make a significant contribution to market quality by providing liquidity at the national best bid and offer ("NBBO") in a large number of securities for a significant portion of the day. Specifically, the Exchange proposes to make a lump sum payment at the end of each month (a "Fixed Payment") to a member organization to the extent that the member organization, through one or more of its MPIDs, quotes at the NBBO for at least a threshold percentage of the time during Market Hours in an average number of securities per day during the month, as specified below. On a daily basis, the Exchange will determine the number of securities in which each of a member organization's MPIDs satisfied the NBBO requirement. The Exchange will aggregate all of a member organization's MPIDs to determine the number of securities for purposes of the NBBO requirement. The program is open to all member organizations. A member organization may but is not required to be, a registered market maker in any security; thus, the program does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker. Accordingly, the program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO.

For purposes of the Enhanced Market Quality Program, a member organization will be deemed to quote at the NBBO in a security if it quotes a displayed order of at least 100 shares in the security and prices the order at either the national best bid or the national best offer or both the national best bid and offer for the security. The Exchange will determine the amount of the Fixed Payment that it pays to a qualifying member organization by multiplying the average daily number of its qualifying securities during the month within the range set forth in the highest qualifying Tier (rounded to the nearest whole number) by the applicable amounts set forth in the following tables below and adding the specified lump sum, where applicable. For a particular Tape A security to count towards the threshold for qualifying for the Fixed Payment on a particular day, and receiving the Fixed Payment, a member organization has to quote such security at the NBBO for at least 30% of the time during Market Hours on that day. For a particular Tape B security to count towards the threshold for qualifying for the Fixed Payment on a particular day, and receiving the Fixed Payment, a member organization has to quote such security at the NBBO for at least 50% of the time during Market Hours on that day. A member organization that qualifies for the Fixed Payment for securities in each of Tapes A and B will receive Fixed Payments covering qualifying securities in both Tapes, but within each Tape, a member organization may only qualify for one Tier during a month.[3]

[3] Example 1: A member firm quotes an average of 250 symbols a day in tape A over the 30% time threshold in a particular month. The Fixed Payment due to such firm is calculated as follows: 51 (the number of symbols over 199) times

The Exchange proposes to set the tiers and the Fixed Payments as follows:

Tape A Securities		
Tiers	**Average daily number of securities quoted at the NBBO for at least 30% of the time during Market Hours during the month**	**Fixed Payment**
1	0-199	$0 per qualified security per month
2	200-299	$25 per qualified security over 199
3	300-399	$2,500 + ($200 per qualified security over 299)
4	400-499	$22,500 + ($300 per qualified security over 399)
5	500 or greater	$52,500 + ($400 per qualified security over 499)

$25, which equals to $1,275 for the month. This example shows a tape A Tier 2 Fixed Payment.

Example 2: A member firm quotes an average of 350 symbols a day in tape A over the 30% time threshold in a particular month. The Fixed Payment due to such firm is calculated as follows: $2,500 plus 51 (the number of symbols over 299) times $200, which equals to $12,700 for the month. This example shows a tape A Tier 3 Fixed Payment.

Tape B Securities		
Tiers	**Average daily number of securities quoted at the NBBO for at least 50% of the time during Market Hours during the month**	**Fixed Payment**
1	0-299	$0 per qualified security per month
2	300-399	$100 per qualified security over 299
3	400-499	$10,000 + ($200 per qualified security over 399)
4	500 or greater	$30,000 + ($300 per qualified security over 499)

Through the use of this incentive program, the Exchange hopes to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the program reflects an effort to use financial incentives to encourage a wider variety of member organizations to make positive commitments to promote market quality. The Exchange believes that different member organizations may respond to different incentives, and therefore the Enhanced Market Quality Program is designed to promote market quality through quoting activity. The Exchange recognizes that while generally market participants will provide quotes with the intention of trading, market makers and liquidity providers cannot control when counter parties choose to interact with those quotes and therefore the Exchange believes it is beneficial to the market to offer this incentive based on quoting activity directly.

The Exchange notes that it will make the Fixed Payment in addition to other rebates or fees provided under Equity 7, Sections 3 (a) - (c).

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 particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among member organizations and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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."[6]

Likewise, in NetCoalition v. Securities and Exchange Commission[7]

---

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

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

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

7 NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

("NetCoalition") the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[8]

The Exchange believes that the proposed Enhanced Market Quality Program is reasonable because it is similar to other incentive programs offered by the Exchange for displayed orders that provide liquidity, like the Qualified Market Maker Program set forth in Equity 7, Sections 3(c). The proposed Fixed Payment will provide an opportunity to member organizations to receive an additional credit in return for certain levels of participation on the Exchange as measured by quoting at the NBBO. The proposed credit is set at a level that is reflective of the beneficial contributions of market participants that quote significantly at the NBBO for a wide range of symbols. The Exchange believes that it is appropriate to limit applicability of the proposed credit to displayed orders in securities in Tape A and Tape B, and set the credits higher for the Tape A securities, insofar as the Exchange seeks to incentivize member organizations to add liquidity to the Exchange in such securities and improve the market therefor.

The Exchange believes that the proposed Fixed Payments set forth by the Enhanced Market Quality Program are an equitable allocation and are not unfairly discriminatory because the Exchange will offer the same credit to all similarly situated

---

8 Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

member organizations. Moreover, the proposed qualification criteria requires a member organization to quote significantly at the NBBO therefore contributing to market quality in a meaningful way on the Exchange. Any member organization may quote at the NBBO at the level required by the qualification criteria of the Enhanced Market Quality Program. The Exchange notes that it has a similar Qualified Market Maker Program in which member organizations are required to quote at the NBBO more than a certain amount of time during regular market hours.[9] For these reasons, the Exchange believes that the proposed Enhanced Market Quality Program Fixed Payments and qualification criteria are an equitable allocation and are not unfairly discriminatory.

The Exchange believes that the proposal is equitable and is not unfairly discriminatory because the Exchange proposes to offer the same Fixed Payments to all similarly situated member organizations. The Exchange also believes that it is equitable and not unfairly discriminatory to establish the Enhanced Market Quality Program only for Tape A and Tape B securities, and set the credits higher for the Tape A securities, because the Exchange has limited resources and the Exchange believes that the best current application of such limited resources is to improve the market quality for Tape A and Tape B securities, as proposed.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if

---

9 See Qualified Market Maker Program, Equity 7, Section 3(c).

they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the Exchange's credits provided to member organizations do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed Fixed Payment provides member organizations with the opportunity to be given higher credits for quotations if they improve the market by providing significant quoting at the NBBO in a large number of securities which the Exchange believes will improve market quality.

In terms of intra-market 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 because the program is open to all member organizations on the same terms.

In sum, the proposed changes are designed to make the Exchange a more desirable venue on which to transact; however, 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,[10] 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.

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

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-2021-47)

August __, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Equity 7, Section 3 to Adopt an Enhanced Market Quality Program

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 August 12, 2021, 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 Equity 7, Section 3 to adopt an Enhanced Market Quality Program and a related credit, 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

---

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

2 17 CFR 240.19b-4.

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

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

1. Purpose

The purpose of the proposed rule change is to amend Equity 7, Section 3 to adopt an Enhanced Market Quality Program and a related credit.

The Enhanced Market Quality Program is intended to provide supplemental incentives to member organizations that meet certain quality standards in acting as market makers for securities on the Exchange by incentivizing such member organizations to make a significant contribution to market quality by providing liquidity at the national best bid and offer ("NBBO") in a large number of securities for a significant portion of the day. Specifically, the Exchange proposes to make a lump sum payment at the end of each month (a "Fixed Payment") to a member organization to the extent that the member organization, through one or more of its MPIDs, quotes at the NBBO for at least a threshold percentage of the time during Market Hours in an average number of securities per day during the month, as specified below. On a daily basis, the Exchange will determine the number of securities in which each of a member organization's MPIDs satisfied the NBBO requirement. The Exchange will aggregate all of a member organization's MPIDs to determine the number of securities for purposes of the NBBO requirement. The program is open to all member organizations. A member organization may but is not required to be, a registered market maker in any security; thus, the program does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker. Accordingly, the program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO.

For purposes of the Enhanced Market Quality Program, a member organization will be deemed to quote at the NBBO in a security if it quotes a displayed order of at least 100 shares in the security and prices the order at either the national best bid or the national best offer or both the national best bid and offer for the security. The Exchange will determine the amount of the Fixed Payment that it pays to a qualifying member organization by multiplying the average daily number of its qualifying securities during the month within the range set forth in the highest qualifying Tier (rounded to the nearest whole number) by the applicable amounts set forth in the following tables below and adding the specified lump sum, where applicable. For a particular Tape A security to count towards the threshold for qualifying for the Fixed Payment on a particular day, and receiving the Fixed Payment, a member organization has to quote such security at the NBBO for at least 30% of the time during Market Hours on that day. For a particular Tape B security to count towards the threshold for qualifying for the Fixed Payment on a particular day, and receiving the Fixed Payment, a member organization has to quote such security at the NBBO for at least 50% of the time during Market Hours on that day. A member organization that qualifies for the Fixed Payment for securities in each of Tapes A and B will receive Fixed Payments covering qualifying securities in both Tapes, but within each Tape, a member organization may only qualify for one Tier during a month.[3]

The Exchange proposes to set the tiers and the Fixed Payments as follows:

Tape A Securities		
Tiers	**Average daily number of securities quoted at the NBBO for at least 30% of the time during Market Hours during the month**	**Fixed Payment**
1	0-199	$0 per qualified security per month
2	200-299	$25 per qualified security over 199
3	300-399	$2,500 + ($200 per qualified security over 299)
4	400-499	$22,500 + ($300 per qualified security over 399)
5	500 or greater	$52,500 + ($400 per qualified security over 499)

3 Example 1: A member firm quotes an average of 250 symbols a day in tape A over the 30% time threshold in a particular month. The Fixed Payment due to such firm is calculated as follows: 51 (the number of symbols over 199) times $25, which equals to $1,275 for the month. This example shows a tape A Tier 2 Fixed Payment.

Example 2: A member firm quotes an average of 350 symbols a day in tape A over the 30% time threshold in a particular month. The Fixed Payment due to such firm is calculated as follows: $2,500 plus 51 (the number of symbols over 299) times $200, which equals to $12,700 for the month. This example shows a tape A Tier 3 Fixed Payment.

Tape B Securities		
Tiers	Average daily number of securities quoted at the NBBO for at least 50% of the time during Market Hours during the month	Fixed Payment
1	0-299	$0 per qualified security per month
2	300-399	$100 per qualified security over 299
3	400-499	$10,000 + ($200 per qualified security over 399)
4	500 or greater	$30,000 + ($300 per qualified security over 499)

Through the use of this incentive program, the Exchange hopes to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the program reflects an effort to use financial incentives to encourage a wider variety of member organizations to make positive commitments to promote market quality. The Exchange believes that different member organizations may respond to different incentives, and therefore the Enhanced Market Quality Program is designed to promote market quality through quoting activity. The Exchange recognizes that while generally market participants will provide quotes with the intention of trading, market makers and liquidity providers cannot control when counter parties choose to interact with those quotes and therefore the Exchange believes it is beneficial to the market to offer this incentive based on quoting activity directly.

The Exchange notes that it will make the Fixed Payment in addition to other rebates or fees provided under Equity 7, Sections 3 (a) - (c).

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 member organizations and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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."[6]

Likewise, in NetCoalition v. Securities and Exchange Commission[7]

---

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

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

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

7 NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

("NetCoalition") the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[8]

The Exchange believes that the proposed Enhanced Market Quality Program is reasonable because it is similar to other incentive programs offered by the Exchange for displayed orders that provide liquidity, like the Qualified Market Maker Program set forth in Equity 7, Sections 3(c). The proposed Fixed Payment will provide an opportunity to member organizations to receive an additional credit in return for certain levels of participation on the Exchange as measured by quoting at the NBBO. The proposed credit is set at a level that is reflective of the beneficial contributions of market participants that quote significantly at the NBBO for a wide range of symbols. The Exchange believes that it is appropriate to limit applicability of the proposed credit to displayed orders in securities in Tape A and Tape B, and set the credits higher for the Tape A securities, insofar as the Exchange seeks to incentivize member organizations to add liquidity to the Exchange in such securities and improve the market therefor.

The Exchange believes that the proposed Fixed Payments set forth by the Enhanced Market Quality Program are an equitable allocation and are not unfairly discriminatory because the Exchange will offer the same credit to all similarly situated

8 Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

member organizations. Moreover, the proposed qualification criteria requires a member organization to quote significantly at the NBBO therefore contributing to market quality in a meaningful way on the Exchange. Any member organization may quote at the NBBO at the level required by the qualification criteria of the Enhanced Market Quality Program. The Exchange notes that it has a similar Qualified Market Maker Program in which member organizations are required to quote at the NBBO more than a certain amount of time during regular market hours.[9] For these reasons, the Exchange believes that the proposed Enhanced Market Quality Program Fixed Payments and qualification criteria are an equitable allocation and are not unfairly discriminatory.

The Exchange believes that the proposal is equitable and is not unfairly discriminatory because the Exchange proposes to offer the same Fixed Payments to all similarly situated member organizations. The Exchange also believes that it is equitable and not unfairly discriminatory to establish the Enhanced Market Quality Program only for Tape A and Tape B securities, and set the credits higher for the Tape A securities, because the Exchange has limited resources and the Exchange believes that the best current application of such limited resources is to improve the market quality for Tape A and Tape B securities, as proposed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if

---

9 See Qualified Market Maker Program, Equity 7, Section 3(c).

they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the Exchange's credits provided to member organizations do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed Fixed Payment provides member organizations with the opportunity to be given higher credits for quotations if they improve the market by providing significant quoting at the NBBO in a large number of securities which the Exchange believes will improve market quality.

In terms of intra-market 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 because the program is open to all member organizations on the same terms.

In sum, the proposed changes are designed to make the Exchange a more desirable venue on which to transact; however, 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.

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.[10]

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

---

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2021-47 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-2021-47. 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-2021-47 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.[11]

J. Matthew DeLesDernier
Assistant Secretary

[11] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq PHLX Rules

* * * * *

EQUITY 7 PRICING SCHEDULE

Sections 1 -2 No change

Section 3 Nasdaq PSX Fees

(a) – (c) No change.

(d) **PSX Enhanced Market Quality Program**

As set forth below, the Exchange shall provide a lump sum payment at the end of each month (a "PSX Fixed Payment") to a member organization to the extent that the member organization, through one or more of its MPIDs, quotes at the NBBO for at least a threshold percentage of the time during Market Hours in an average number of securities per day during the month (as specified below). On a daily basis, the Exchange will determine the number of securities in which each of a member organization's MPIDs satisfied the NBBO requirement. The Exchange will aggregate all of a member organization's MPIDs to determine the number of securities for purposes of the NBBO requirement. For purposes of this program, a member organization will be deemed to quote at the NBBO in a security if it quotes a displayed order of at least 100 shares in the security and prices the order at either the national best bid or the national best offer or both the national best bid and offer for the security. The Exchange will determine the amount of the PSX Fixed Payment that it pays to a qualifying member organization by multiplying the average daily number of its qualifying securities during the month within the range set forth in the Tier (rounded to the nearest whole number) by the applicable amounts set forth in the following paragraphs and adding the specified lump sum, where applicable. A member organization that qualifies for a PSX Fixed Payment for securities in each of Tapes A and B will receive PSX Fixed Payments covering qualifying securities in both Tapes, but within each Tape, a member organization may only qualify for one Tier during a month. The Exchange will pay the PSX Fixed Payment in addition to other rebates or fees provided under Equity 7, Sections 3(a) - (c).

Tape A Securities		
Tiers	**Average daily number of securities quoted at the NBBO for at least 30% of the time during Market Hours during the month**	**Fixed Payment**
1	0-199	$0 per qualified security per

		month
2	200-299	$25 per qualified security over 199
3	300-399	$2,500 + ($200 per qualified security over 299)
4	400-499	$22,500 + ($300 per qualified security over 399)
5	500 or greater	$52,500 + ($400 per qualified security over 499)
Tape B Securities		
Tiers	**Average daily number of securities quoted at the NBBO for at least 50% of the time during Market Hours during the month**	**Fixed Payment**
1	0-299	$0 per qualified security per month
2	300-399	$100 per qualified security over 299
3	400-499	$10,000 + ($200 per qualified security over 399)
4	500 or greater	$30,000 + ($300 per qualified security over 499)

* * * * *