

Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2023 - * 43

Amendment No. (req. for Amendments *)

Filing by Nasdaq PHLX LLC

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input checked="" type="checkbox"/> 19b-4(f)(6)	Submit with link to Prefiling or Request for Waiver option
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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 4, Rules 3301A and 3301B.

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 * Principal Associate General Counsel

E-mail * brett.kitt@nasdaq.com

Telephone * (301) 978-8132 Fax


Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq PHLX LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 09/05/2023 (Title *)

By John Zecca (Name *) EVP and Chief Legal Officer

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

 Date: 2023.09.05 10:27:11 -04'00'

Required fields are shown with yellow backgrounds and astericks.

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

SR-Phlx-2023-43 19b-4.doc

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

SR-Phlx-2023-43 Exhibit 1.doc

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 Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change 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

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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

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 Sent As Paper Document

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

Add Remove View

SR-Phlx-2023-43 Exhibit 5.doc

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 4, Rules 3301A and 3301B,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 of the Exchange (the “Board”). 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
Principal Associate General Counsel
Nasdaq, Inc.
(301) 978-8132

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ References herein to Phlx Rules in the 3000 Series shall mean Rules in Phlx Equity 4.

or

Jasica Desai
Senior Paralegal
Nasdaq, Inc.
(301) 978-4958

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

a. Purpose

The Exchange proposes amendments to its Rules to address inconsistencies between the Rule Text and observed System behavior as well as behavior unaccounted for in the existing Rule text, as follows. This proposal is similar to a rule change filed by the Exchange's sister exchange, the Nasdaq Stock Market, LLC, on August 16, 2023.⁴

FIRST RULE CHANGE

The first proposed rule change addresses an edge case of inconsistency between the Rule text and System behavior, this time regarding Market Maker Peg Orders.⁵ Rule 3301A states that, if after entry of a Market Maker Peg Order that has a displayed price based on the NBBO, and the NBBO subsequently shifts such that the displayed price of the Market Maker Peg Order to buy (sell) is equal to or greater (less) than the National Best Bid (or National Best Offer), the Market Maker Peg Order will not be subsequently

⁴ See Securities Exchange Act Release No. 34-98225 (August 16, 2023), 88 FR 60255 (August 31, 2023) (SR-NASDAQ-2023-030). The Exchange's proposal differs from that of Nasdaq in that it excludes changes to Order Types and Attributes that are inapplicable to the Exchange due to its absence of opening and closing crosses.

⁵ Pursuant to Rule 3301B(b)(5)(A), a "Market Maker Peg Order" is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a displayed price that is compliant with the quotation requirements for Market Makers set forth in Equity 2, Section 5(a)(2). The displayed price of the Market Maker Peg Order is set with reference to a "Reference Price" in order to keep the displayed price of the Market Maker Peg Order within a bounded price range. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current National Best Bid (National Best Offer), or if no such National Best Bid or National Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (e.g., dividends or stock splits) in the security.

repriced until a new reference price is established that is more aggressive than the displayed price of the Market Maker Peg Order. System testing revealed that the System does not reprice Market Maker Peg Orders in this scenario, but only if such Orders are in round lot sizes, whereas it does reprice such Orders when they are in odd lot sizes. After evaluation, the Exchange determined to maintain this System behavior and amend the Rule to conform to it. The Exchange proposes to do so because the existing language proscribing repricing only makes sense within the context of round lot Market Maker Peg Orders, which in this scenario would set a new NBBO and when they do so, cannot reprice with respect to the reference price they just set. By contrast, odd lot Market Maker Peg Orders are ineligible to set the NBBO, and do not have this same problem. Accordingly, the Exchange proposes to amend Rule 3301A to clarify that the prohibition against repricing only applies to Market Maker Peg Orders in round lot sizes.

SECOND RULE CHANGE

The second proposal would amend Equity 4, Rule 3301B(h), to correct its description of behavior of the Non-Displayed portion of Orders with the Reserve Attribute.⁶ Rule 3301B(h) provides as follows, in pertinent part:

In all cases, if the remaining size of the Non-Displayed Order is less than the fixed or random amount stipulated by the Participant, the full remaining size of the Non-Displayed Order will be displayed and the Non-Displayed Order will be removed.

⁶ “Reserve Size” is, in part, an Order Attribute that “permits a Participant to stipulate that an Order Type that is displayed may have its displayed size replenished from additional non-displayed size.” Rule 3301B(h). The Rule also states that Reserve “is not available for Orders that are not displayed; provided, however, that if a Participant enters Reserve Size for a Non-Displayed Order with a Time-in-Force of IOC, the full size of the Order, including Reserve Size, will be processed as a Non-Displayed Order.” *Id.* In addition to the change proposed above, the Exchange proposes to eliminate from the immediately preceding language “with a Time-in-Force of IOC” because the Exchange does not assess a reason to include this qualifier. The statement that a Non-Displayed Order with Reserve will be entirely non-displayed is true even as to Non-Displayed Orders with other TIFs.

As stated, this Rule requires that the entire Non-Displayed portion of a Reserve Order will become Displayed the moment the size of the Non-Displayed portion drops below an amount that a participant designates or has directed the System to randomly designate (the “Max Floor”). In conducting a test of System behavior, however, the Exchange observed that the System does not, in fact, operate in this manner. Instead, the System maintains the Non-Displayed portion of a Reserve Order as such when the size of that Non-Displayed Portion drops below the Max Floor. Rather than correct the current System behavior to match the Rule, the Exchange determined that users of Reserve Orders prefer the current System behavior because it is true to the underlying intent of Reserve functionality, which is to help limit the price impacts of trading large quantities of shares by displaying only small portions of such shares at a given time, while hiding the rest in reserve. Thus, the Exchange proposes to address the inconsistency between the Rule text and the behavior of the System by deleting the aforementioned language from Rule 3301B(h). Going forward, the System will not convert to a Displayed Order the Non-Displayed remainder of a Reserve Order that falls below the Max Floor, and the System will not remove it.

b. Statutory Basis

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,⁷ in general, and further the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

It is consistent with the Act to amend the Exchange's Rules to address inconsistencies between the Rule text and observed System behavior, including by adapting the Rule text to codify observed System behavior, where the observed behavior is more consistent with the underlying purpose of an Order Attribute than is the Rule text (maintaining the Non-Displayed status of a reserve portion of a Reserve Order that drops below the Max Floor) and where System behavior reflects a nuance not contemplated by the existing Rules (clarifying that the prohibition against repricing Market Maker Peg Orders that have prices equal to or better than the NBBO only applies to round lot Market Maker Peg Orders, and not to odd lots).

Finally, it is consistent with the Act to amend Rule 3301B(h) to delete qualifying language which erroneously suggests that Non-Displayed Orders with Reserve are only non-displayed when such Orders have a TIF of IOC. Investors and the public have an interest in the Exchange maintaining a Rulebook that is accurate.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposals merely address inconsistencies between Rule text and System behavior. The Exchange neither intends nor perceives that these rule changes will have any impact on competition.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not Applicable.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)⁹ of the Act and Rule 19b-4(f)(6) thereunder¹⁰ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

As noted above, it is in the interests of investors and the public for the Exchange to address inconsistencies between its Rulebook and observed behavior, including by proposing modifications to Rules to conform to System behavior where the System behavior is more logical or consistent with the Exchange's underlying intent. Further, it is in the interests of the public and investors to correct inaccuracies in the Exchange's Rulebook. The proposed changes will not impose any significant or undue burden on competition to the extent that they serve these purposes.

Furthermore, Rule 19b-4(f)(6)(iii)¹¹ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

This proposal is similar to a rule change filed by the Nasdaq Stock Market, LLC on August 16, 2023,¹² except that it excludes aspects of that rule change that are inapplicable to the Exchange, including those involving opening and closing crosses, which the Exchange does not conduct.

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.

¹² See Securities Exchange Act Release No. 34-98225 (August 16, 2023), 88 FR 60255 (August 31, 2023) (SR-NASDAQ-2023-030).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2023-43)

September __, 2023

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Equity 4, Rules 3301A and 3301B

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 5, 2023, 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 4, Rules 3301A and 3301B.³

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.

³ References herein to Phlx Rules in the 3000 Series shall mean Rules in Phlx Equity 4.

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

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

1. Purpose

The Exchange proposes amendments to its Rules to address inconsistencies between the Rule Text and observed System behavior as well as behavior unaccounted for in the existing Rule text, as follows. This proposal is similar to a rule change filed by the Exchange's sister exchange, the Nasdaq Stock Market, LLC, on August 16, 2023.⁴

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repriced until a new reference price is established that is more aggressive than the displayed price of the Market Maker Peg Order. System testing revealed that the System does not reprice Market Maker Peg Orders in this scenario, but only if such Orders are in round lot sizes, whereas it does reprice such Orders when they are in odd lot sizes. After evaluation, the Exchange determined to maintain this System behavior and amend the Rule to conform to it. The Exchange proposes to do so because the existing language proscribing repricing only makes sense within the context of round lot Market Maker Peg Orders, which in this scenario would set a new NBBO and when they do so, cannot reprice with respect to the reference price they just set. By contrast, odd lot Market Maker Peg Orders are ineligible to set the NBBO, and do not have this same problem. Accordingly, the Exchange proposes to amend Rule 3301A to clarify that the prohibition against repricing only applies to Market Maker Peg Orders in round lot sizes.

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⁶ “Reserve Size” is, in part, an Order Attribute that “permits a Participant to stipulate that an Order Type that is displayed may have its displayed size replenished from additional non-displayed size.” Rule 3301B(h). The Rule also states that Reserve “is not available for Orders that are not displayed; provided, however, that if a Participant enters Reserve Size for a Non-Displayed Order with a Time-in-Force of IOC, the full size of the Order, including Reserve Size, will be processed as a Non-Displayed Order.” *Id.* In addition to the change proposed above, the Exchange proposes to eliminate from the immediately preceding language “with a Time-in-Force of IOC” because the Exchange does not assess a reason to include this qualifier. The statement that a Non-Displayed Order with Reserve will be entirely non-displayed is true even as to Non-Displayed Orders with other TIFs.

As stated, this Rule requires that the entire Non-Displayed portion of a Reserve Order will become Displayed the moment the size of the Non-Displayed portion drops below an amount that a participant designates or has directed the System to randomly designate (the “Max Floor”). In conducting a test of System behavior, however, the Exchange observed that the System does not, in fact, operate in this manner. Instead, the System maintains the Non-Displayed portion of a Reserve Order as such when the size of that Non-Displayed Portion drops below the Max Floor. Rather than correct the current System behavior to match the Rule, the Exchange determined that users of Reserve Orders prefer the current System behavior because it is true to the underlying intent of Reserve functionality, which is to help limit the price impacts of trading large quantities of shares by displaying only small portions of such shares at a given time, while hiding the rest in reserve. Thus, the Exchange proposes to address the inconsistency between the Rule text and the behavior of the System by deleting the aforementioned language from Rule 3301B(h). Going forward, the System will not convert to a Displayed Order the Non-Displayed remainder of a Reserve Order that falls below the Max Floor, and the System will not remove it.

2. Statutory Basis

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,⁷ in general, and further the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

It is consistent with the Act to amend the Exchange's Rules to address inconsistencies between the Rule text and observed System behavior, including by adapting the Rule text to codify observed System behavior, where the observed behavior is more consistent with the underlying purpose of an Order Attribute than is the Rule text (maintaining the Non-Displayed status of a reserve portion of a Reserve Order that drops below the Max Floor) and where System behavior reflects a nuance not contemplated by the existing Rules (clarifying that the prohibition against repricing Market Maker Peg Orders that have prices equal to or better than the NBBO only applies to round lot Market Maker Peg Orders, and not to odd lots).

Finally, it is consistent with the Act to amend Rule 3301B(h) to delete qualifying language which erroneously suggests that Non-Displayed Orders with Reserve are only non-displayed when such Orders have a TIF of IOC. Investors and the public have an interest in the Exchange maintaining a Rulebook that is accurate.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposals merely address inconsistencies between Rule text and System behavior. The Exchange neither intends nor perceives that these rule changes will have any impact on competition.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

(<https://www.sec.gov/rules/sro.shtml>); or

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2023-43 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-2023-43. This file number should be included on the subject line if email 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 website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2023-43 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Sherry R. Haywood,

Assistant Secretary.

¹¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

NASDAQ PHLX LLC RULES**Equity 4: Equity Trading Rules**

* * * * *

Rule 3301A. Order Types

(a) No change.

(b) Except where stated otherwise, the following Order Types are available to all Participants:

(1) – (4) No change.

(5)

(A)

...

A new timestamp is created for a Market Maker Peg Order each time that it is repriced. In the absence of a Reference Price, a Market Maker Peg Order will be cancelled (if on the PSX Book) or rejected (if it is an incoming Order). If, after entry, a Market Maker Peg Order has a displayed price based on a Reference Price other than the NBBO and such Market Maker Peg Order is established as the National Best Bid or National Best Offer, the Market Maker Peg Order will not be subsequently repriced in accordance with this rule until a new Reference Price is established. Additionally, if after entry, a Market Maker Peg Order of round lot size has a displayed price based on the NBBO, and the NBBO subsequently shifts such that the displayed price of the Market Maker Peg Order to buy (sell) is equal to or greater (less) than the National Best Bid (National Best Offer), the Market Maker Peg Order will not be subsequently repriced in accordance with this Rule until a new Reference Price is established that is more aggressive than the displayed price of the Market Maker Peg Order. In such cases, the new Reference Price may be established by a change in the NBBO based on another market center's quotation or by the entry into the System of any Displayed Order with a price better than the displayed price of the Market Maker Peg Order, whether the new Order is at a price that is lower than, higher than or equal to the prior Reference Price.

* * * * *

Rule 3301B. Order Attributes.

As described in Equity 4, Rule 3301A, the following Order Attributes may be assigned to those Order Types for which they are available.

(a) – (g) No change.

* * * * *

(h) Reserve Size. Reserve Size is an Order Attribute that permits a Participant to stipulate that an Order Type that is displayed may have its displayed size replenished from additional non-displayed size. An Order with Reserve Size may be referred to as a "Reserve Order." At the time of entry, the displayed size of such an Order selected by the Participant must be one or more normal units of trading; an Order with a displayed size of a mixed lot will be rounded down to the nearest round lot. A Reserve Order with displayed size of an odd lot : (i) entered using OUCH will be rejected; or (ii) entered using RASH or FIX will be accepted but with the full size of the Order displayed. Reserve Size is not available for Orders that are not displayed; provided, however, that if a Participant enters Reserve Size for a Non-Displayed Order[with a Time-in-Force of IOC], the full size of the Order, including Reserve Size, will be processed as a Non-Displayed Order.

...

[In all cases, if the remaining size of the Non-Displayed Order is less than the fixed or random amount stipulated by the Participant, the full remaining size of the Non-Displayed Order will be displayed and the Non-Displayed Order will be removed.]

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