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Page 1 of \* 36

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

File No. \* SR 2024 - \* 17

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"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
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 fee schedule at Equity 7, Section 3 to implement a Market Data Revenue Rebate program.

**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 \* Katie Last Name \* Hopkins

Title \* Associate General Counsel

E-mail \* katie.hopkins@nasdaq.com

Telephone \* (301) 232-4067 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 04/15/2024


(Title \*)

By John Zecca

EVP and Chief Legal Officer

(Name \*)

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: 2024.04.15 13:19:21 -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 EDFS website.

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

Add Remove View

SR-Phlx-2024-17 19b-4.docx

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 \***

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SR-Phlx-2024-17 Exhibit 1.docx

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**

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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**

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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**

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SR-Phlx-2024-17 Exhibit 5.docx

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) Nasdaq PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s fee schedule at Equity 7, Section 3 to implement a Market Data Revenue Rebate program, 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”). 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:

Katie Hopkins  
Associate General Counsel  
Nasdaq, Inc.  
301-232-4067

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

<sup>2</sup> 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 amend its fee schedule at Equity 7, Section 3 to adopt a Market Data Revenue (“MDR”) Rebate program for Nasdaq PSX.<sup>3</sup> In sum, the proposed MDR Rebate program calls for 40% of MDR that exceeds fixed thresholds in any one of two pools (“Excess MDR”) to be shared with PSX Participants in proportion to their respective eligible quoting activity in Tape A and C securities, as described further below. The proposed MDR Rebate program is designed to improve displayed liquidity and promote order flow to the Exchange by offering an incentive for market participants to quote on the Exchange.

*Background*

The Securities Information Processors (“SIPs”), which include the Unlisted Trading Privileges and the Consolidated Tape Association, collect fees from subscribers for trade and quote tape data received from trading centers and reporting facilities, such as the Exchange (collectively “SIP Participants”). After deducting the cost of operating each tape, the profits are allocated among the SIP Participants on a quarterly basis, according to a complex set of calculations that consider estimates of anticipated MDR, adjustments to comport to actual MDR from previous quarters and a non-linear aggregation of total trading and quoting activity in Tape A, B and C securities in attributing MDR to each SIP Participant. Based on these calculations, the SIPs provide MDR payments to each SIP Participant during the first month of each quarter for trade

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<sup>3</sup> The Exchange initially filed the proposed pricing change on April 1, 2024 (SR-Phlx-2024-16). The instant filing replaces SR-Phlx-2024-16, which was withdrawn on April 15, 2024.

and quote data from the previous calendar quarter, which are subject to adjustment through subsequent quarterly payments. These payments can be divided into six pools (i.e., trade and quote activity in Tape A, B and C securities).

*Proposed PSX MDR Rebate Program*

As the Exchange does not currently share MDR with Participants, the Exchange now proposes to implement a PSX MDR Rebate program to share MDR attributed to quote activity only by adopting a PSX MDR Rebate program in Equity 7, Section 3.

Specifically, proposed Section (a) provides that, assuming that the requirements of this PSX MDR Rebate Section are met, a PSX Participant may receive a quarterly MDR rebate in proportion to the PSX Participant's quoting of displayed orders in Tape A and C securities from the previous calendar quarter ("MDR Rebate"), as described further in Section (e).

Proposed Section (b) provides that, to qualify for the MDR Rebate, a PSX Participant must quote at the National Best Bid or Offer ("NBBO") at least 25% of the time during Market Hours in an average of at least 250 securities for Tape A securities or at least 300 securities for Tape C securities through the PSX Participant's MPID. A PSX Participant is considered to be quoting at the NBBO if the PSX Participant's MPID 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. To qualify for the MDR Rebate, the PSX Participant must meet the requirement for an average of at least 250 securities for Tape A securities or at least 300 securities for Tape C securities per day over the course of the quarter.

Proposed Section (c) provides that MDR will be calculated separately for quotes in each Tape A and C security, for a total of two MDR pools. If the MDR received by the Exchange in any given pool exceeds the following thresholds in any given calendar quarter, 40% of such excess MDR will be payable to PSX Participants in proportion to their respective quoting of displayed orders in that pool:

<u>TAPE A</u>	<u>TAPE C</u>
<u>\$110,000</u>	<u>\$200,000</u>

The proposed thresholds were selected based on historical data of PSX's quoting revenue from Q2 2023 – Q4 2023. The dollar values represent the amount of MDR that must be paid to the Exchange by the SIPs before the Excess MDR would be eligible for distribution.

The Exchange proposes to adopt two of the six MDR pools utilized by the SIPs, excluding the pools for trading activity and the pool for quoting activity in Tape B, and attributing the proposed MDR Rebates to PSX Participants for quote activity in Tapes A and C. Currently, PSX Participants are most actively quoting Tape B securities on PSX. The Exchange proposes to establish the MDR Rebates for quoting activity in Tapes A and C because the Exchange wants to encourage increased quoting at the NBBO for Tapes A and C.

Section (d) provides a *de minimis* requirement that states that a PSX Participant will not receive an MDR Rebate in any calendar quarter in which the total MDR Rebate attributed to the PSX Participant is less than \$500. If a PSX Participant is eligible for MDR Rebates from both pools, the PSX Participant will be eligible to receive an MDR rebate equal to the sum of the rebates. However, if the sum of the rebates is less than \$500, the PSX Participant will not receive a payment and the rebate will be kept by the

Exchange. The purpose of the *de minimis* requirement is to encourage significant quote activity and for the Exchange to avoid having to pay PSX Participants for *de minimis* Excess MDR.<sup>4</sup>

In attributing eligible quote activity to PSX Participants, the Exchange proposes to utilize a set of calculations similar to those used by the SIPs in allocating MDR to SIP Participants. Section (e) of the proposed rule language describes the steps for calculating MDR Rebates:

- Step 1.* Calculate, on a daily basis (per MPID), the product of three factors: number of shares in the quotation, the duration of the quotation at the NBBO (for both the bid and the offer), and the price of the security.
- Step 2.* For each security, sum the daily values from Step 1 across the quarter, the sum of which represents the PSX Participant's quote credits (per MPID) in each security.
- Step 3.* For each security, sum all PSX Participants' quote credits to obtain the total quote credits available per security.
- Step 4.* Divide each PSX Participant's quote credits (per MPID) (from Step 2) into the total quote credits available per security (from Step 3) to obtain a Participant's percentage of the security they are quoting (per MPID).
- Step 5.* Calculate the income allocation weight for each security based on the share of revenue allocated to the symbol by the SIP that quarter.

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<sup>4</sup> For example, it would be unduly burdensome to the Exchange to calculate and pay MDR Rebates to PSX Participants if the total Excess MDR of all the pools was \$4000 and ten PSX Participants were each attributed \$400 in rebates.

*Step 6.* For each security, multiply a PSX Participant's percentage of security they are quoting (per MPID) (from Step 4) by the income allocation weight of the security (from Step 5).

*Step 7.* For each PSX Participant's MPID, sum the values calculated in Step 6 across all securities in the pool (i.e., in the same Tape) to obtain the PSX Participant's allocation percentage for the excess MDR in the pool.

*Step 8.* For each PSX Participant with eligible quote activity in the pool, multiply the PSX Participant's allocation percentage (from Step 7) by the excess MDR in the pool to determine the dollar amount of the PSX Participant's MDR Rebate in the pool.

As for calculating the pool of funds from which MDR Rebates will be paid, unlike the SIPs, the Exchange will derive MDR Rebate allocation from a fixed value that will not be subject to adjustment (i.e., the amount of MDR actually received by the Exchange on a quarterly basis). This avoids the problem of having to adjust MDR rebates that have already been paid to PSX Participants to comport to adjustments to MDR made by the SIPs.<sup>5</sup>

The following *Example*, which the Exchange provides in the proposed rule language, illustrates how Excess MDR will be calculated and distributed:

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<sup>5</sup> For example, if MDR paid to the Exchange was less than anticipated in Q3 2024 due to an adjustment to the MDR paid to the Exchange in Q2 2024 (i.e., actual MDR in Q2 fell short of estimates), the Exchange will not recoup the difference from the PSX Participants that had been paid the Q2 MDR Rebate. Instead, the MDR Rebate for Q3 will be calculated based on the actual MDR paid to the Exchange in Q3.



*Step 1.* On the first day of the quarter, PSX Participant A earns 59,000 quote credits in MPID 1 for Security X (a Tape C security):  $59 \text{ seconds} \times \$10 \times 100$  shares.

*Step 2.* Assume PSX Participant A earns 4,000,000 quote credits for Security X in MPID 1 after summing its daily quote credits across the quarter.

*Step 3.* Assume there are five PSX Participants (i.e., Participants A, B, C, D and E) that had eligible quote activity in Security X during the quarter. The quarterly quote credits for Security X are as follows:

<b>PARTICIPANT</b>	<b>SECURITY X QUOTE</b>
<b>A</b>	4,000,000
<b>B</b>	1,000,000
<b>C</b>	3,500,000
<b>D</b>	2,500,000
<b>E</b>	5,000,000
<b>TOTAL</b>	16,000,000

*Step 4.* PSX Participant A's percentage of Security X it quoted is 25%:  
 $4,000,000 / 16,000,000$ .

*Step 5.* Assume the SIP allocated revenue of \$360,000 to Security X for the quarter and \$36,000,000 to all securities in the Tape C pool for the quarter. The income allocation weight for security X is 1%:  $\$360,000 / \$36,000,000$ .

*Step 6.* PSX Participant A's allocation percentage for the excess MDR in Security X in MPID 1 is 0.25%:  $25\% \times 1\%$ .

*Step 7.* Assume, after summing the allocation percentage calculated in Step 6 across all securities in the Tape C pool, PSX Participant A's allocation percentage is 2.5% in MPID 1.

*Step 8.* Assume PSX Participant A quoted at the NBBO at least 25% of the time during Market Hours in an average of at least 300 securities in Tape C through MPID 1, in accordance with section (b) above.

The following table represents the proposed MDR pool thresholds:

<b>TAPE A</b>	<b>TAPE C</b>
\$110,000	\$200,000

Under this Example, assume that the quarterly MDR paid to the Exchange is apportioned as follows:

<b>TAPE A</b>	<b>TAPE C</b>
\$110,000	\$350,000

Under this Example, the Tape C pool has excess MDR in the amount of \$150,000.

However, the Tape A pool has no excess MDR because the actual MDR received in the Tape A pool was equal to its \$110,000 threshold. Thus, PSX Participants may be paid MDR Rebates for attributed eligible quoting activity from 40% of the excess MDR in the Tape C pool, which is \$60,000.

The attributed MDR for PSX Participant A in MPID 1 is \$1,500:  $2.5\% \times 60,000$ .

Since the attributed MDR is greater than \$500, PSX Participant A would receive an MDR payment in the amount of \$1,500.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> 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 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’ ....”<sup>8</sup>

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in

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

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>8</sup> 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 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.”<sup>9</sup>

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

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. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes it is reasonable, equitable, and not unfairly discriminatory for the Exchange to adopt a PSX MDR Rebate program that provides for sharing of Excess MDR with PSX Participants in proportion to their respective eligible quoting activity in Tape A and C securities, as described above. The Exchange believes the proposal is reasonable as it will provide an incentive for PSX Participants to increase quoting in displayed liquidity in Tape A and C securities on the Exchange. An increase

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

in displayed liquidity and order flow to the Exchange will, in turn, improve the quality of the market and increase its attractiveness to existing and prospective participants. In addition, the proposal is equitable and not unfairly discriminatory as the proposal would equitably allocate MDR Rebates among PSX Participants by paying MDR Rebates according to the total quoting activity in Tape A and C securities attributable to a PSX Participant in any given calendar quarter. The MDR Rebates are available to all PSX Participants.

Furthermore, the proposal is reasonable and equitable because it will be subject to competition. Evidence of platform competition demonstrates that each exchange product is sold in a competitive environment, and its fees will be an equitable allocation of reasonable dues, fees, and other charges, provided that nothing about the product or its fee structure impairs competition. Exchanges, like all trading venues, compete as platforms. All elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert. Trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and colocation services. To make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities, meaning demand for one set of platform services depends on the demand for other services.

Platform competition has resulted in a competitive environment in the market for exchange services, in which trading platforms are constrained by other platforms' offerings, taking into consideration the all-in cost of interacting with the platform. This

constraint is a natural consequence of competition and demonstrates that no exchange platform can charge excessive fees and expect to remain competitive, thereby constraining fees on all products sold as part of the platform. Incentive programs have been widely adopted by exchanges, and are reasonable, equitable, and non-discriminatory because they are open on an equal basis to similarly situated participants and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality and activity. This proposal promotes competition by offering PSX Participants an incentive, in the form of MDR Rebates, to display liquidity in Tape A and C securities. The intent is to generate a "virtuous cycle," in which the proposed rebates will attract more liquidity to the Exchange, making it a more attractive trading venue, and thereby attracting more liquidity. More displayed liquidity on the Exchange will enhance and enrich the market data distributed to the industry, which then increases the amount of interest in the platform.

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, the Exchange's proposal is intended to have market-improving effects, by increasing displayed liquidity and order flow to the Exchange, to the benefit of all participants. The Exchange notes that its participants are free to trade on other venues to the extent they believe that the proposal is 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.

#### Intermarket Competition

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 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 credits and 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 credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition.

Even the largest U.S. equities exchange by volume has less than 20% 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 upwards of 50% of industry volume.

In sum, if the change 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 change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>10</sup> 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

The proposal is similar to SR-CHX-2013-18.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).



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-2024-17)

April \_\_, 2024

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Fee Schedule at Equity 7, Section 3 to Implement a Market Data Revenue Rebate Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 15, 2024, 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 its fee schedule at Equity 7, Section 3 to implement a Market Data Revenue Rebate program, 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

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

<sup>2</sup> 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 amend its fee schedule at Equity 7, Section 3 to adopt a Market Data Revenue (“MDR”) Rebate program for Nasdaq PSX.<sup>3</sup> In sum, the proposed MDR Rebate program calls for 40% of MDR that exceeds fixed thresholds in any one of two pools (“Excess MDR”) to be shared with PSX Participants in proportion to their respective eligible quoting activity in Tape A and C securities, as described further below. The proposed MDR Rebate program is designed to improve displayed liquidity and promote order flow to the Exchange by offering an incentive for market participants to quote on the Exchange.

*Background*

The Securities Information Processors (“SIPs”), which include the Unlisted Trading Privileges and the Consolidated Tape Association, collect fees from subscribers for trade and quote tape data received from trading centers and reporting facilities, such as the Exchange (collectively “SIP Participants”). After deducting the cost of operating each tape, the profits are allocated among the SIP Participants on a quarterly basis, according to a complex set of calculations that consider estimates of anticipated MDR, adjustments to comport to actual MDR from previous quarters and a non-linear aggregation of total trading and quoting activity in Tape A, B and C securities in attributing MDR to each SIP Participant. Based on these calculations, the SIPs provide

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<sup>3</sup> The Exchange initially filed the proposed pricing change on April 1, 2024 (SR-Phlx-2024-16). The instant filing replaces SR-Phlx-2024-16, which was withdrawn on April 15, 2024.

MDR payments to each SIP Participant during the first month of each quarter for trade and quote data from the previous calendar quarter, which are subject to adjustment through subsequent quarterly payments. These payments can be divided into six pools (i.e., trade and quote activity in Tape A, B and C securities).

*Proposed PSX MDR Rebate Program*

As the Exchange does not currently share MDR with Participants, the Exchange now proposes to implement a PSX MDR Rebate program to share MDR attributed to quote activity only by adopting a PSX MDR Rebate program in Equity 7, Section 3.

Specifically, proposed Section (a) provides that, assuming that the requirements of this PSX MDR Rebate Section are met, a PSX Participant may receive a quarterly MDR rebate in proportion to the PSX Participant's quoting of displayed orders in Tape A and C securities from the previous calendar quarter ("MDR Rebate"), as described further in Section (e).

Proposed Section (b) provides that, to qualify for the MDR Rebate, a PSX Participant must quote at the National Best Bid or Offer ("NBBO") at least 25% of the time during Market Hours in an average of at least 250 securities for Tape A securities or at least 300 securities for Tape C securities through the PSX Participant's MPID. A PSX Participant is considered to be quoting at the NBBO if the PSX Participant's MPID 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. To qualify for the MDR Rebate, the PSX Participant must meet the requirement for an average of at least 250 securities for Tape A securities or at least 300 securities for Tape C securities per day over the course of the quarter.

Proposed Section (c) provides that MDR will be calculated separately for quotes in each Tape A and C security, for a total of two MDR pools. If the MDR received by the Exchange in any given pool exceeds the following thresholds in any given calendar quarter, 40% of such excess MDR will be payable to PSX Participants in proportion to their respective quoting of displayed orders in that pool:

<b><u>TAPE A</u></b>	<b><u>TAPE C</u></b>
<b><u>\$110,000</u></b>	<b><u>\$200,000</u></b>

The proposed thresholds were selected based on historical data of PSX's quoting revenue from Q2 2023 – Q4 2023. The dollar values represent the amount of MDR that must be paid to the Exchange by the SIPs before the Excess MDR would be eligible for distribution.

The Exchange proposes to adopt two of the six MDR pools utilized by the SIPs, excluding the pools for trading activity and the pool for quoting activity in Tape B, and attributing the proposed MDR Rebates to PSX Participants for quote activity in Tapes A and C. Currently, PSX Participants are most actively quoting Tape B securities on PSX. The Exchange proposes to establish the MDR Rebates for quoting activity in Tapes A and C because the Exchange wants to encourage increased quoting at the NBBO for Tapes A and C.

Section (d) provides a *de minimis* requirement that states that a PSX Participant will not receive an MDR Rebate in any calendar quarter in which the total MDR Rebate attributed to the PSX Participant is less than \$500. If a PSX Participant is eligible for MDR Rebates from both pools, the PSX Participant will be eligible to receive an MDR rebate equal to the sum of the rebates. However, if the sum of the rebates is less than \$500, the PSX Participant will not receive a payment and the rebate will be kept by the

Exchange. The purpose of the *de minimis* requirement is to encourage significant quote activity and for the Exchange to avoid having to pay PSX Participants for *de minimis* Excess MDR.<sup>4</sup>

In attributing eligible quote activity to PSX Participants, the Exchange proposes to utilize a set of calculations similar to those used by the SIPs in allocating MDR to SIP Participants. Section (e) of the proposed rule language describes the steps for calculating MDR Rebates:

*Step 1.* Calculate, on a daily basis (per MPID), the product of three factors: number of shares in the quotation, the duration of the quotation at the NBBO (for both the bid and the offer), and the price of the security.

*Step 2.* For each security, sum the daily values from Step 1 across the quarter, the sum of which represents the PSX Participant's quote credits (per MPID) in each security.

*Step 3.* For each security, sum all PSX Participants' quote credits to obtain the total quote credits available per security.

*Step 4.* Divide each PSX Participant's quote credits (per MPID) (from Step 2) into the total quote credits available per security (from Step 3) to obtain a Participant's percentage of the security they are quoting (per MPID).

*Step 5.* Calculate the income allocation weight for each security based on the share of revenue allocated to the symbol by the SIP that quarter.

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<sup>4</sup> For example, it would be unduly burdensome to the Exchange to calculate and pay MDR Rebates to PSX Participants if the total Excess MDR of all the pools was \$4000 and ten PSX Participants were each attributed \$400 in rebates.

*Step 6.* For each security, multiply a PSX Participant's percentage of security they are quoting (per MPID) (from Step 4) by the income allocation weight of the security (from Step 5).

*Step 7.* For each PSX Participant's MPID, sum the values calculated in Step 6 across all securities in the pool (i.e., in the same Tape) to obtain the PSX Participant's allocation percentage for the excess MDR in the pool.

*Step 8.* For each PSX Participant with eligible quote activity in the pool, multiply the PSX Participant's allocation percentage (from Step 7) by the excess MDR in the pool to determine the dollar amount of the PSX Participant's MDR Rebate in the pool.

As for calculating the pool of funds from which MDR Rebates will be paid, unlike the SIPs, the Exchange will derive MDR Rebate allocation from a fixed value that will not be subject to adjustment (i.e., the amount of MDR actually received by the Exchange on a quarterly basis). This avoids the problem of having to adjust MDR rebates that have already been paid to PSX Participants to comport to adjustments to MDR made by the SIPs.<sup>5</sup>

The following *Example*, which the Exchange provides in the proposed rule language, illustrates how Excess MDR will be calculated and distributed:

*Step 1.* On the first day of the quarter, PSX Participant A earns 59,000 quote credits in MPID 1 for Security X (a Tape C security): 59 seconds x \$10 x 100 shares.

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<sup>5</sup> For example, if MDR paid to the Exchange was less than anticipated in Q3 2024 due to an adjustment to the MDR paid to the Exchange in Q2 2024 (i.e., actual MDR in Q2 fell short of estimates), the Exchange will not recoup the difference from the PSX Participants that had been paid the Q2 MDR Rebate. Instead, the MDR Rebate for Q3 will be calculated based on the actual MDR paid to the Exchange in Q3.

*Step 2.* Assume PSX Participant A earns 4,000,000 quote credits for Security X in MPID 1 after summing its daily quote credits across the quarter.

*Step 3.* Assume there are five PSX Participants (i.e., Participants A, B, C, D and E) that had eligible quote activity in Security X during the quarter. The quarterly quote credits for Security X are as follows:

<b>PARTICIPANT</b>	<b>SECURITY X QUOTE</b>
<b>A</b>	4,000,000
<b>B</b>	1,000,000
<b>C</b>	3,500,000
<b>D</b>	2,500,000
<b>E</b>	5,000,000
<b>TOTAL</b>	16,000,000

*Step 4.* PSX Participant A's percentage of Security X it quoted is 25%:

$4,000,000/16,000,000$ .

*Step 5.* Assume the SIP allocated revenue of \$360,000 to Security X for the quarter and \$36,000,000 to all securities in the Tape C pool for the quarter. The income allocation weight for security X is 1%:  $\$360,000/\$36,000,000$ .

*Step 6.* PSX Participant A's allocation percentage for the excess MDR in Security X in MPID 1 is 0.25%:  $25\% \times 1\%$ .

*Step 7.* Assume, after summing the allocation percentage calculated in Step 6 across all securities in the Tape C pool, PSX Participant A's allocation percentage is 2.5% in MPID 1.

*Step 8.* Assume PSX Participant A quoted at the NBBO at least 25% of the time during Market Hours in an average of at least 300 securities in Tape C through MPID 1, in accordance with section (b) above.



The following table represents the proposed MDR pool thresholds:

<b>TAPE A</b>	<b>TAPE C</b>
\$110,000	\$200,000

Under this Example, assume that the quarterly MDR paid to the Exchange is apportioned as follows:

<b>TAPE A</b>	<b>TAPE C</b>
\$110,000	\$350,000

Under this Example, the Tape C pool has excess MDR in the amount of \$150,000.

However, the Tape A pool has no excess MDR because the actual MDR received in the Tape A pool was equal to its \$110,000 threshold. Thus, PSX Participants may be paid MDR Rebates for attributed eligible quoting activity from 40% of the excess MDR in the Tape C pool, which is \$60,000.

The attributed MDR for PSX Participant A in MPID 1 is \$1,500:  $2.5\% \times 60,000$ .

Since the attributed MDR is greater than \$500, PSX Participant A would receive an MDR payment in the amount of \$1,500.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> 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 Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant

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

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

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’ ....”<sup>8</sup>

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.”<sup>9</sup>

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

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<sup>8</sup> 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)).

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

participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

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. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes it is reasonable, equitable, and not unfairly discriminatory for the Exchange to adopt a PSX MDR Rebate program that provides for sharing of Excess MDR with PSX Participants in proportion to their respective eligible quoting activity in Tape A and C securities, as described above. The Exchange believes the proposal is reasonable as it will provide an incentive for PSX Participants to increase quoting in displayed liquidity in Tape A and C securities on the Exchange. An increase in displayed liquidity and order flow to the Exchange will, in turn, improve the quality of the market and increase its attractiveness to existing and prospective participants. In addition, the proposal is equitable and not unfairly discriminatory as the proposal would equitably allocate MDR Rebates among PSX Participants by paying MDR Rebates according to the total quoting activity in Tape A and C securities attributable to a PSX Participant in any given calendar quarter. The MDR Rebates are available to all PSX Participants.

Furthermore, the proposal is reasonable and equitable because it will be subject to competition. Evidence of platform competition demonstrates that each exchange product is sold in a competitive environment, and its fees will be an equitable allocation of

reasonable dues, fees, and other charges, provided that nothing about the product or its fee structure impairs competition. Exchanges, like all trading venues, compete as platforms. All elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert. Trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and colocation services. To make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities, meaning demand for one set of platform services depends on the demand for other services.

Platform competition has resulted in a competitive environment in the market for exchange services, in which trading platforms are constrained by other platforms' offerings, taking into consideration the all-in cost of interacting with the platform. This constraint is a natural consequence of competition and demonstrates that no exchange platform can charge excessive fees and expect to remain competitive, thereby constraining fees on all products sold as part of the platform. Incentive programs have been widely adopted by exchanges, and are reasonable, equitable, and non-discriminatory because they are open on an equal basis to similarly situated participants and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality and activity. This proposal promotes competition by offering PSX Participants an incentive, in the form of MDR Rebates, to display liquidity in Tape A and C securities. The intent is to generate a "virtuous cycle," in which the proposed rebates will attract more liquidity to the Exchange, making it a more attractive trading venue, and

thereby attracting more liquidity. More displayed liquidity on the Exchange will enhance and enrich the market data distributed to the industry, which then increases the amount of interest in the platform.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

As noted above, the Exchange's proposal is intended to have market-improving effects, by increasing displayed liquidity and order flow to the Exchange, to the benefit of all participants. The Exchange notes that its participants are free to trade on other venues to the extent they believe that the proposal is 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.

Intermarket Competition

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 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 credits and 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 credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition.

Even the largest U.S. equities exchange by volume has less than 20% 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 upwards of 50% of industry volume.

In sum, if the change 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 change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>10</sup>

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<sup>10</sup> 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.

#### 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
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-Phlx-2024-17 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-2024-17. 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-2024-17 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.<sup>11</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

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<sup>11</sup> 17 CFR 200.30-3(a)(12).



**EXHIBIT 5**

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

**NASDAQ PHLX LLC RULES**

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**Equity Rules**

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**EQUITY 7 PRICING SCHEDULE**

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**Section 3 Nasdaq PSX Fees**

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**PSX Pre-Trade Risk Management**

(a) Users of PSX Pre-trade Risk Management ("PRM") will be assessed a monthly fee based on the following table, and such fees will not exceed \$25,000 per member firm, per month:

<b>Port Tiers</b>	<b>Number of PRM-Enabled Ports</b>	<b>Monthly Fee</b>
Tier 1	50 or more	\$400 per port, per month
Tier 2	20 to 49	\$500 per port, per month
Tier 3	5 to 19	\$550 per port, per month
Tier 4	1 to 4	\$600 per port, per month

(b) Users of PRM services specified below will be assessed the following charges in addition to the applicable PRM-enabled port charges:

PRM Modules	No charge
Aggregate Total Checks	No charge
PRM Workstation Add-ons to an existing Workstation or WeblinkACT 2.0	\$100 per each PRM Workstation Add-on per month

### **PSX Market Data Revenue (“MDR”) Rebate**

(a) Assuming the requirements of this PSX MDR Rebate Section are met, a PSX Participant may receive a quarterly MDR rebate in proportion to the PSX Participant’s quoting of displayed orders in Tape A and C securities from the previous calendar quarter (“MDR Rebate”), as described further in Section (e) below.

(b) To qualify for the MDR Rebate, a PSX Participant must quote at the NBBO at least 25% of the time during Market Hours in an average number of securities specified below in either Tape A or Tape C through the PSX Participant’s MPID. For purposes of this Section, a PSX Participant is considered to be quoting at the NBBO if the PSX Participant’s MPID 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. To qualify for the MDR Rebate, the PSX Participant must meet the requirement for an average number of securities (specified below) in either Tape A or Tape C per day over the course of the quarter.

<b><u>TAPE A</u></b>	<b><u>TAPE C</u></b>
<u>At least 250 symbols</u>	<u>At least 300 symbols</u>

(c) MDR will be calculated separately for quotes in each Tape A and C security, for a total of two MDR pools. If the MDR received by the Exchange in any given pool exceeds the following thresholds in any given calendar quarter, 40% of such excess MDR will be payable to PSX Participants in proportion to their respective quoting of displayed orders in that pool.

<b><u>TAPE A</u></b>	<b><u>TAPE C</u></b>
<u>\$110,000</u>	<u>\$200,000</u>

(d) A PSX Participant will not be paid an MDR Rebate in any calendar quarter in which the total MDR Rebate attributable to the PSX Participant is less than \$500.

(e) If excess MDR exists in any given pool, MDR Rebates will be calculated according to the following steps:

Step 1. Calculate, on a daily basis (per MPID), the product of three factors: number of shares in the quotation, the duration of the quotation at the NBBO (for both the bid and the offer), and the price of the security.

Step 2. For each security, sum the daily values from Step 1 across the quarter, the sum of which represents the PSX Participant’s quote credits (per MPID) in each security.

Step 3. For each security, sum all PSX Participants’ quote credits to obtain the total quote credits available per security.

Step 4. Divide each PSX Participant's quote credits (per MPID) (from Step 2) into the total quote credits available per security (from Step 3) to obtain a Participant's percentage of the security they are quoting (per MPID).

Step 5. Calculate the income allocation weight for each security based on the share of revenue allocated to the symbol by the SIP that quarter.

Step 6. For each security, multiply a PSX Participant's percentage of security they are quoting (per MPID) (from Step 4) by the income allocation weight of the security (from Step 5).

Step 7. For each PSX Participant's MPID, sum the values calculated in Step 6 across all securities in the pool (i.e., in the same Tape) to obtain the PSX Participant's allocation percentage for the excess MDR in the pool.

Step 8. For each PSX Participant with eligible quote activity in the pool, multiply the PSX Participant's allocation percentage (from Step 7) by the excess MDR in the pool to determine the dollar amount of the PSX Participant's MDR Rebate in the pool.

Example:

Step 1. On the first day of the quarter, PSX Participant A earns 59,000 quote credits in MPID 1 for Security X (a Tape C security): 59 seconds x \$10 x 100 shares.

Step 2. Assume PSX Participant A earns 4,000,000 quote credits for Security X in MPID 1 after summing its daily quote credits across the quarter.

Step 3. Assume there are five PSX Participants (i.e., Participants A, B, C, D and E) that had eligible quote activity in Security X during the quarter. The quarterly quote credits for Security X are as follows:

<u>PARTICIPANT</u>	<u>SECURITY X QUOTE CREDITS</u>
<u>A</u>	<u>4,000,000</u>
<u>B</u>	<u>1,000,000</u>
<u>C</u>	<u>3,500,000</u>
<u>D</u>	<u>2,500,000</u>
<u>E</u>	<u>5,000,000</u>
<u>TOTAL</u>	<u>16,000,000</u>

Step 4. PSX Participant A's percentage of Security X it quoted is 25%: 4,000,000/16,000,000.

Step 5. Assume the SIP allocated revenue of \$360,000 to Security X for the quarter and \$36,000,000 to all securities in the Tape C pool for the quarter. The income allocation weight for security X is 1%: \$360,000/\$36,000,000.

Step 6. PSX Participant A’s allocation percentage for the excess MDR in Security X in MPID 1 is 0.25%: 25% x 1%.

Step 7. Assume, after summing the allocation percentage calculated in Step 6 across all securities in the Tape C pool, PSX Participant A’s allocation percentage is 2.5% in MPID 1.

Step 8. Assume PSX Participant A quoted at the NBBO at least 25% of the time during Market Hours in an average of at least 300 securities in Tape C through MPID 1, in accordance with section (b) above.

The following table represents the proposed MDR pool thresholds:

<b><u>TAPE A</u></b>	<b><u>TAPE C</u></b>
<b><u>\$110,000</u></b>	<b><u>\$200,000</u></b>

Under this Example, assume that the quarterly MDR paid to the Exchange is apportioned as follows:

<b><u>TAPE A</u></b>	<b><u>TAPE C</u></b>
<b><u>\$110,000</u></b>	<b><u>\$350,000</u></b>

Under this Example, the Tape C pool has excess MDR in the amount of \$150,000. However, the Tape A pool has no excess MDR because the actual MDR received in the Tape A pool was equal to its \$110,000 threshold. Thus, PSX Participants may be paid MDR Rebates for attributed eligible quoting activity from 40% of the excess MDR in the Tape C pool, which is \$60,000.

The attributed MDR for PSX Participant A in MPID 1 is \$1,500: 2.5% x 60,000.

Since the attributed MDR is greater than \$500, PSX Participant A would receive an MDR payment in the amount of \$1,500.