

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 22

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

File No. * SR 2024 - * 23

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 Cabinet Proximity Option Fee at General 8, Section 1.

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 05/09/2024


(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: 2024.05.09 12:06:48 -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 *

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SR-Phlx-2024-23 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-2024-23 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-2024-23 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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s Cabinet Proximity Option Fee at General 8, Section 1, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change³ is to amend the Exchange’s Cabinet Proximity Option Fee at General 8, Section 1(d) by establishing a reservation fee for cabinets with power densities greater than 10 kilowatts (“kW”).⁴

The Exchange currently offers a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available, unused cabinet space in proximity to their existing equipment. Cabinets reserved under the Cabinet Proximity Option program are unused cabinets that customers reserve for future use and can be converted to a powered cabinet at the customer’s request. Under the program, customers can reserve up to maximum of 20 cabinets that the Exchange endeavors to provide as close as reasonably possible to the customer’s existing cabinet space, taking into consideration power availability within segments of the data center and the overall efficiency of use of data center resources as determined by the Exchange. Should reserved data center space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: proximity between available reserved

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-Phlx-2024-09). On March 13, 2024, the Exchange withdrew that filing and submitted SR-Phlx-2024-12. On May 9, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ On February 26, 2024, the Exchange filed a proposal to offer the Exchange’s Cabinet Proximity Option program for cabinets with power densities greater than 10 kW. See Securities Exchange Act Release No. 34-99644 (February 29, 2024), 89 FR 16069 (March 6, 2024) (SR-Phlx-2024-06).

cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the data center space.⁵

The applicable monthly fees for the Cabinet Proximity Option program are in General 8, Section 1(d). The Cabinet Proximity Option fee is \$1,055/month per medium or low density cabinets and \$1,583/month per medium/high or high density cabinets.⁶ The Exchange proposes to establish a Cabinet Proximity Option fee of \$3,000 for cabinets with power densities greater than 10 kW. As such, the Exchange proposes to amend its fee schedule at General 8, Section 1(d) to reflect the addition to the existing Cabinet Proximity Option fees.

Currently, the Exchange offers Super High Density Cabinets with power densities greater than 10 kW and less than or equal to 17.3 kW.⁷ In addition, the Exchange intends to expand its data center and offer cabinets with increased power densities in the future, including power densities greater than 17.3 kW.⁸ Customers will not be liable to pay fees under the Cabinet Proximity Option program until such time as cabinets can be converted to powered cabinets. To be clear, the Cabinet Proximity Option fee of \$3,000 for

⁵ See Securities Exchange Act Release No. 34-62395 (June 28, 2010), 75 FR 38584 (July 2, 2010) (SR-Phlx-2010-18).

⁶ Low density cabinets are cabinets with power densities less than or equal to 2.88 kW. Medium density cabinets are cabinets with power densities greater than 2.88 kW and less than or equal to 5 kW. Medium/High density cabinets are cabinets with power densities greater than 5 kW and less than or equal to 7 kW. High density cabinets are cabinets with power densities greater than 7 kW and less than 10 kW. See General 8, Section 1(a).

⁷ See General 8, Section 1(a).

⁸ The Exchange will submit proposed rule change(s) to the Commission regarding any proposal to expand its services, including a proposal to offer cabinets with new power densities.

cabinets with power densities greater than 10 kW would apply to any such reservations in the existing data center. Although the Exchange has an expansion of the data center underway, the fees for the Cabinet Proximity Option program would not apply to the expanded data center until the expansion is operational and cabinets are available and able to be converted to powered cabinets.⁹

The proposed Cabinet Proximity Option fee of \$3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW. Such option is available to all customers. Similar to other fees related to cabinet and power usage, the Cabinet Proximity Option fee is incremental, with higher fees being imposed based on higher levels of cabinet and power allocation. The proposed Cabinet Proximity Option fee of \$3,000 for cabinets with power densities greater than 10 kW is comparable to pricing for “PNU cabinets”¹⁰ available to customers of co-location facilities of the New York Stock Exchange LLC (“NYSE”), which charges a monthly fee of \$360 per kW for PNU cabinets.¹¹

⁹ Although the timing is subject to change, the Exchange anticipates that the data center expansion will be complete by September 2024.

¹⁰ Similar to the Exchange’s Cabinet Proximity Option program, the New York Stock Exchange offers “PNU cabinets,” which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests. Due to heightened demand for power and cabinets, NYSE established certain procedures related to PNU cabinet conversion and restrictions on new PNU cabinet offerings. NYSE adopted a policy that, if unallocated cabinet inventory is at or below 40 cabinets, new PNU cabinets are not offered. However, when the unallocated cabinet inventory is more than 40 cabinets, NYSE may continue to offer PNU cabinets. See Securities Exchange Act Release No. 34-90732 (December 18, 2020), 85 FR 84443 (December 28, 2020). See also Securities Exchange Act Release No. 34-91515 (April 8, 2021), 86 FR 19674 (April 14, 2021).

¹¹ See NYSE Connectivity Fee Schedule, available at https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹³ 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.

First, the proposal is reasonable because the proposed fee is comparable to NYSE's monthly fee of \$360 per kW for PNU cabinets.¹⁴ As noted above, NYSE offers "PNU cabinets," which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests.¹⁵ The Exchange's proposal would establish a flat \$3,000 Cabinet Proximity Option fee for cabinets with power densities greater than 10 kW. Under NYSE's fee schedule, a reservation for a cabinet with power density equal to 10 kW would be \$3,600 (e.g., 10 kW x \$360). Because NYSE's PNU cabinet fees are charged on a per kW basis, PNU cabinet fees for cabinets with power densities greater than 10 kW would be more than \$3,600 and increase as the power density of the cabinet increases. Therefore, the Exchange's proposal reflects a discounted price to reserve such cabinets as compared to NYSE's fees for comparable PNU cabinets.

Furthermore, the Exchange offers the Cabinet Proximity Option program as a convenience to customers, providing an option to reserve unused cabinet space in proximity to their existing equipment. No firms are required to reserve cabinets via the

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

¹⁴ See NYSE Connectivity Fee Schedule, available at https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

¹⁵ Supra note 10.

Cabinet Proximity Option program. Clients may simply order cabinets without utilizing reservations. The proposed Cabinet Proximity Option fee of \$3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW and such option is available to all customers.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange,¹⁶ connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of this proposed fee can choose to connect to the Exchange through a vendor (or order cabinets without reservations, as noted above).

In offering the Cabinet Proximity Option the Exchange incurs certain costs, including costs related to the data center, including maintaining an adequate level of power so that reserved cabinets can be available and powered on promptly at the request

¹⁶ There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 15% of the market share. See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated January 11, 2024), available at https://www.cboe.com/us/equities/market_statistics/. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

of customers.

If the Exchange is incorrect in its determination that the proposed fee reflects the value of the Cabinet Proximity Option for cabinets with power densities greater than 10 kW, customers will not reserve such cabinets.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because the proposed fee is less than NYSE's fee for a comparable service, customers have choices in how they connect to the Exchange, and reservations under the Cabinet Proximity Option program are optional and provided as a convenience to customers.

The Exchange believes that the proposed fee change is not unfairly discriminatory because the Cabinet Proximity Option fee is assessed uniformly across all market participants that voluntarily select the option, which is available to all customers. All customers have the choice of whether and how to connect to the Exchange and may order cabinets without utilizing reservations.

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.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative

exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Cabinet Proximity Option program is available to any customer under the same fees as any other customer, and any customer that wishes to reserve a cabinet pursuant to the Cabinet Proximity Option program can do so on a non-discriminatory basis.

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,¹⁷ 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.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2024-23)

May __, 2024

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Cabinet Proximity Option Fee at General 8, Section 1

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 May 9, 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 the Exchange’s Cabinet Proximity Option Fee at General 8, Section 1, as described further below.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

1. Purpose

The purpose of the proposed rule change³ is to amend the Exchange's Cabinet Proximity Option Fee at General 8, Section 1(d) by establishing a reservation fee for cabinets with power densities greater than 10 kilowatts ("kW").⁴

The Exchange currently offers a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available, unused cabinet space in proximity to their existing equipment. Cabinets reserved under the Cabinet Proximity Option program are unused cabinets that customers reserve for future use and can be converted to a powered cabinet at the customer's request. Under the program, customers can reserve up to maximum of 20 cabinets that the Exchange endeavors to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the data center and the overall efficiency of use of data center resources as determined by the Exchange. Should reserved data center space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-Phlx-2024-09). On March 13, 2024, the Exchange withdrew that filing and submitted SR-Phlx-2024-12. On May 9, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ On February 26, 2024, the Exchange filed a proposal to offer the Exchange's Cabinet Proximity Option program for cabinets with power densities greater than 10 kW. See Securities Exchange Act Release No. 34-99644 (February 29, 2024), 89 FR 16069 (March 6, 2024) (SR-Phlx-2024-06).

cabinet space or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the data center space.⁵

The applicable monthly fees for the Cabinet Proximity Option program are in General 8, Section 1(d). The Cabinet Proximity Option fee is \$1,055/month per medium or low density cabinets and \$1,583/month per medium/high or high density cabinets.⁶ The Exchange proposes to establish a Cabinet Proximity Option fee of \$3,000 for cabinets with power densities greater than 10 kW. As such, the Exchange proposes to amend its fee schedule at General 8, Section 1(d) to reflect the addition to the existing Cabinet Proximity Option fees.

Currently, the Exchange offers Super High Density Cabinets with power densities greater than 10 kW and less than or equal to 17.3 kW.⁷ In addition, the Exchange intends to expand its data center and offer cabinets with increased power densities in the future, including power densities greater than 17.3 kW.⁸ Customers will not be liable to pay fees

⁵ See Securities Exchange Act Release No. 34-62395 (June 28, 2010), 75 FR 38584 (July 2, 2010) (SR-Phlx-2010-18).

⁶ Low density cabinets are cabinets with power densities less than or equal to 2.88 kW. Medium density cabinets are cabinets with power densities greater than 2.88 kW and less than or equal to 5 kW. Medium/High density cabinets are cabinets with power densities greater than 5 kW and less than or equal to 7 kW. High density cabinets are cabinets with power densities greater than 7 kW and less than 10 kW. See General 8, Section 1(a).

⁷ See General 8, Section 1(a).

⁸ The Exchange will submit proposed rule change(s) to the Commission regarding any proposal to expand its services, including a proposal to offer cabinets with new power densities.

under the Cabinet Proximity Option program until such time as cabinets can be converted to powered cabinets. To be clear, the Cabinet Proximity Option fee of \$3,000 for cabinets with power densities greater than 10 kW would apply to any such reservations in the existing data center. Although the Exchange has an expansion of the data center underway, the fees for the Cabinet Proximity Option program would not apply to the expanded data center until the expansion is operational and cabinets are available and able to be converted to powered cabinets.⁹

The proposed Cabinet Proximity Option fee of \$3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW. Such option is available to all customers. Similar to other fees related to cabinet and power usage, the Cabinet Proximity Option fee is incremental, with higher fees being imposed based on higher levels of cabinet and power allocation. The proposed Cabinet Proximity Option fee of \$3,000 for cabinets with power densities greater than 10 kW is comparable to pricing for “PNU cabinets”¹⁰ available to customers of co-location facilities of the New York Stock Exchange LLC (“NYSE”), which charges a monthly fee of \$360 per kW for PNU cabinets.¹¹

⁹ Although the timing is subject to change, the Exchange anticipates that the data center expansion will be complete by September 2024.

¹⁰ Similar to the Exchange’s Cabinet Proximity Option program, the New York Stock Exchange offers “PNU cabinets,” which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests. Due to heightened demand for power and cabinets, NYSE established certain procedures related to PNU cabinet conversion and restrictions on new PNU cabinet offerings. NYSE adopted a policy that, if unallocated cabinet inventory is at or below 40 cabinets, new PNU cabinets are not offered. However, when the unallocated cabinet inventory is more than 40 cabinets, NYSE may continue to offer PNU cabinets. See Securities Exchange Act Release No. 34-90732 (December 18, 2020), 85 FR 84443 (December 28, 2020). See also Securities Exchange Act Release No. 34-91515 (April 8, 2021), 86 FR 19674 (April 14, 2021).

¹¹ See NYSE Connectivity Fee Schedule, available at https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹³ 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.

First, the proposal is reasonable because the proposed fee is comparable to NYSE's monthly fee of \$360 per kW for PNU cabinets.¹⁴ As noted above, NYSE offers "PNU cabinets," which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests.¹⁵ The Exchange's proposal would establish a flat \$3,000 Cabinet Proximity Option fee for cabinets with power densities greater than 10 kW. Under NYSE's fee schedule, a reservation for a cabinet with power density equal to 10 kW would be \$3,600 (e.g., 10 kW x \$360). Because NYSE's PNU cabinet fees are charged on a per kW basis, PNU cabinet fees for cabinets with power densities greater than 10 kW would be more than \$3,600 and increase as the power density of the cabinet increases. Therefore, the Exchange's proposal reflects a discounted price to reserve such cabinets as compared to NYSE's fees for comparable PNU cabinets.

Furthermore, the Exchange offers the Cabinet Proximity Option program as a convenience to customers, providing an option to reserve unused cabinet space in proximity to their existing equipment. No firms are required to reserve cabinets via the

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

¹⁴ See NYSE Connectivity Fee Schedule, available at https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

¹⁵ Supra note 10.

Cabinet Proximity Option program. Clients may simply order cabinets without utilizing reservations. The proposed Cabinet Proximity Option fee of \$3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW and such option is available to all customers.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange,¹⁶ connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of this proposed fee can choose to connect to the Exchange through a vendor (or order cabinets without reservations, as noted above).

In offering the Cabinet Proximity Option the Exchange incurs certain costs, including costs related to the data center, including maintaining an adequate level of power so that reserved cabinets can be available and powered on promptly at the request of customers.

¹⁶ There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 15% of the market share. See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated January 11, 2024), available at https://www.cboe.com/us/equities/market_statistics/. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

If the Exchange is incorrect in its determination that the proposed fee reflects the value of the Cabinet Proximity Option for cabinets with power densities greater than 10 kW, customers will not reserve such cabinets.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because the proposed fee is less than NYSE's fee for a comparable service, customers have choices in how they connect to the Exchange, and reservations under the Cabinet Proximity Option program are optional and provided as a convenience to customers.

The Exchange believes that the proposed fee change is not unfairly discriminatory because the Cabinet Proximity Option fee is assessed uniformly across all market participants that voluntarily select the option, which is available to all customers. All customers have the choice of whether and how to connect to the Exchange and may order cabinets without utilizing reservations.

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.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Cabinet Proximity Option program is available to any customer under the same fees as any other customer, and any customer that wishes to reserve a cabinet pursuant to the Cabinet Proximity Option program can do so on a non-discriminatory basis.

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.¹⁷

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

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2024-23 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-2024-23. 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-2024-23 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.¹⁸

Sherry R. Haywood,

Assistant Secretary.

¹⁸ 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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General Equity and Options Rules

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General 8 Connectivity

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Section 1. Co-Location Services

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(d) Additional Charges/Services

Additional Items		
Description	Installation Fee	Ongoing Monthly Fee
* * * * *	* * * * *	* * * * *
Cabinet Proximity Option Fee	\$0	\$1,055 per medium or low density cabinet, or \$1,583 per medium/high or high density cabinet <u>or</u> \$3,000 per cabinet with power density >10kW

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