

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ PHLX LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

A proposal to amend Phlx Rule 3317 to modify the web site data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot 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 * Andrew	Last Name * Madar
Title * Senior Associate General Counsel	
E-mail * andrew.madar@nasdaq.com	
Telephone * (301) 978-8420	Fax (301) 978-8472

Signature

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

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

(Title *)

Date 11/30/2016	Executive Vice President and General Counsel
By Edward S. Knight	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>
(Name *)	

edward.knight@nasdaq.com

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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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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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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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, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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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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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 Phlx Rule 3317 to modify the web site data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”) and to clarify a provision related to the reporting of certain Market Maker profitability data. Phlx also proposes to amend Rule 3317(b)(5) to clarify the timing and format of publication of data related to Market Maker registration.

The Exchange requests that the Commission waive the five-day pre-filing requirement and the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).³

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 the Board of Directors of the Exchange on August 29, 2016. No other action is necessary for the filing of the rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

Questions and comments on the proposed rule change may be directed to:

Andrew Madar
Senior Associate General Counsel
Nasdaq, Inc.
301-978-8420

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

a. Purpose

On August 25, 2014, Phlx and several other self-regulatory organizations (the “Participants”) filed with the Commission, pursuant to Section 11A of the Act⁴ and Rule 608 of Regulation NMS thereunder,⁵ the Plan to Implement a Tick Size Pilot Program.⁶ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.⁷ The Plan was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.⁸ The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.⁹ On November 6, 2015, the SEC exempted the Participants from implementing the Pilot until October 3, 2016.¹⁰ Under the revised Pilot implementation

⁴ 15 U.S.C. 78k-1.

⁵ 17 CFR 242.608.

⁶ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁷ See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

⁸ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

⁹ See Approval Order at 27533 and 27545.

¹⁰ See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

date, the Pre-Pilot data collection period commenced on April 4, 2016. On September 13, 2016, the SEC exempted the Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Participants to implement the pilot on a phased-in basis, as described in the Participants' exemptive request.¹¹

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

Phlx adopted rule amendments to implement the requirements of the Plan, including relating to the Plan's data collection requirements and requirements relating to web site data publication.¹² Specifically, with respect to the web site data publication requirements pursuant to Section VII and Appendices B and C to the Plan, Phlx Rule 3317(b)(2)(B) provides, among other things, that Phlx shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph (b)(2) of Rule 3317, publicly available on the Exchange web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Rule 3317(b)(3)(C),

¹¹ See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; see also Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

¹² See, e.g., Securities Exchange Act Release No. 77458 (March 28, 2016), 81 FR 18919 (April 1, 2016) (SR-Phlx-2016-39); see also Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated February 17, 2016.

provides, among other things, that Phlx shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3) of Rule 3317, publicly available on the Exchange web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Commentary .08 to Rule 3317 provides, among other things, that the requirement that Phlx make certain data publicly available on the Exchange web site pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period.

Phlx is proposing amendments to Rule 3317(b)(2)(B) (regarding Appendix B.I and B.II data) and Rule 3317(b)(3)(C) (regarding Appendix B.IV data) to provide that data required to be made available on Phlx's web site be published within 120 calendar days following month end. In addition, the proposed amendments to Commentary .08 to Rule 3317 would provide that, notwithstanding the provisions of paragraphs (b)(2)(B), (b)(3)(C), and (b)(5), Phlx shall make data for the Pre-Pilot period publicly available on the Phlx web site pursuant to Appendix B and C to the Plan by February 28, 2017.¹³

The purpose of delaying the publication of the website data is to address confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.

Phlx also proposes to amend Rule 3317(b)(4), which relates to the reporting of Market Maker profitability data for members for the Exchange is the Designated Examining Authority ("DEA"). Currently, Rule 3317(b)(4)(A) states that a Member that

¹³ With respect to data for the Pilot Period, the requirement that Phlx make data publicly available on the Phlx web site pursuant to Appendix B and C to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first website publication date for Pilot Period data (covering October 2016) would be published on the Phlx web site by February 28, 2017, which is 120 days following the end of October 2016.

is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions on any Trading Center that have settled or reached settlement date. Information related to Market Maker profitability will be collected by FINRA and transmitted to the SEC and, on an aggregate basis, also be made publicly available.¹⁴

The Financial Industry Regulatory Authority, Inc. (“FINRA”) recently submitted a proposed rule change amending FINRA Rule 6191(b), which sets forth FINRA’s obligations with respect to data collection and reporting under the Plan. With this rule change, FINRA proposes to publish (1) Market Maker profitability statistics for Market Makers for which FINRA is the DEA; (2) Market Maker profitability statistics collected from other Participants that are DEAs, and (iii) Market Maker profitability statistics for Market Makers whose DEA is not a Participant.¹⁵ As part of its rule change, FINRA also stated that it would make this data publicly available on the FINRA web site within 120 calendar days following month end at no charge. In its proposal, FINRA noted that the publication by FINRA of Market Maker profitability data on the FINRA website, including Market Makers for which FINRA is not the DEA, is intended to address confidentiality concerns with respect to the Appendix C data required to be made publicly available by the Participants. Although the Participants that are DEAs also would not have identified the Market Makers when publishing required Appendix C data, FINRA noted that some of the Participants are DEAs for a very small number of Market

¹⁴ See FINRA Rule 6191(b)(4)(B).

¹⁵ See SR-FINRA-2016-042.

Makers, and the published data from these DEAs raised concerns regarding the potential for identifying the Market Makers that correspond to those statistics.¹⁶

Although the Exchange is currently a DEA for certain member firms, Rule 3317 does not currently require Phlx as DEA to report the information collected pursuant to paragraph (b)(4) to FINRA for publication. Given FINRA's recent proposed rule change, the Exchange is therefore proposing to adopt Rule 3317(b)(4)(C) to address the reporting of Market Maker profitability data for members for which Phlx is the DEA. Rule 3317(b)(4)(C) states that the Exchange, as DEA, shall collect the data required by Item I of Appendix C to the Plan and paragraph (b)(4)(A) for those Members that are Market Makers for which the Exchange is DEA, and on a monthly basis transmit such data, categorized by the Control Group and each Test Group, to the SEC in a pipe delimited format. Rule 3317(b)(4)(C) also provides that the Exchange, as DEA, shall make the data collected pursuant to subparagraph (4) of Rule 3317(b) available to FINRA for aggregation and publication, categorized by the Control Group and each Test Group, on the FINRA website pursuant to FINRA Rules. Rule 3317(b)(4)(C) does not alter the information required to be submitted to the SEC.

Finally, Phlx proposes to amend Rule 3317(b)(5), which relates to the collection and transmission of Market Maker registration statistics. Currently, Rule 3317(b)(5) provides that the Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for (1) transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to

¹⁶ Id.

the Pilot Period through the trading day immediately preceding the Pilot Period; and (2) transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. Although the Plan requires that such data be made publicly available,¹⁷ Rule 3317(b)(5) does not currently include a provision requiring the Exchange to publish such data to its website. The Exchange therefore proposes to amend Rule 3317(b)(5) to provide that the Exchange shall make Market Maker registration data publicly available on the Exchange web site within 120 calendar days following month end at no charge.

As noted in Item 2 of this filing, Phlx has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, because it is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the SEC.

¹⁷ See Section VII.A. 4 of the Plan.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

In approving the Plan, the Commission recognized that requiring the publication of Market Maker data may raise confidentiality concerns, especially for Pilot Securities that may have a relatively small number of designated Market Makers.²⁰ For this reason, the Commission modified the Plan so that the data that would be made publicly available would not contain profitability measures for each security, but would be aggregated by the Control Group and each Test Group. Phlx believes that this proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting Phlx to delay web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. With respect to the change to Rule 3317(b)(5), the Exchange believes this change will clarify the timing and format of publication of data related to Market Maker registration.

Phlx believes that the addition of Rule 3317(b)(4)(C) relating to the reporting of Market Maker profitability data to FINRA is consistent with the Act because it effectuates FINRA's recent proposal, which itself is designed to further address confidentiality concerns by permitting FINRA to aggregate and publish Market Maker profitability data for all Participant DEAs, including Market Makers for which FINRA is not the DEA.²¹ Phlx notes that this proposal also does not alter the information required to be submitted to the SEC.

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

²⁰ See Approval Order at 27543 - 27544.

²¹ See SR-FINRA-2016-042.

Act. Phlx notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition, especially for Pilot Securities that may have a relatively small number of designated Market Makers, by (1) permitting Phlx to delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information; and (2) making Market Maker profitability statistics that Phlx has gathered as DEA available to FINRA for aggregation and publication. The proposal also does not alter the information required to be submitted to the SEC.

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.²²

6. Extension of Time Period for Commission Action

Not applicable.

²² Phlx notes that Financial Information Forum (FIF) submitted a letter to the staff of the Commission raising concerns regarding the publication of certain Appendix B statistics on a disaggregated basis using a unique masked market participant identifier. See Letter from Mary Lou Von Kaenel, Managing Director, FIF, to David S. Shillman, Associate Director, Division of Trading and Markets, Commission, dated August 16, 2016, available at <https://www.fif.com/comment-letters>.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)²³ of the Act and Rule 19b-4(f)(6) thereunder²⁴ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

Phlx notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by (1) permitting Phlx to delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information; and (2) facilitating FINRA's proposal to aggregate and publish Market Marker profitability data. Phlx notes that the proposed change does not alter the information required to be submitted to the SEC.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. Phlx requests that the Commission waive the five-day pre-filing requirement, as set forth in Rule 19b-4(f)(6).

²³ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁴ 17 CFR 240.19b-4(f)(6).

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that the proposal will be operative as of the current date by which the Exchange is required to make the information that is subject to this proposal publicly available on its web site.

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-2016-118)

December __, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 3317 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot)

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 November 30, 2016, 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 Phlx Rule 3317 to modify the web site data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”) and to clarify a provision related to the reporting of certain Market Maker profitability data. Phlx also proposes to amend Rule 3317(b)(5) to clarify the timing and format of publication of data related to Market Maker registration.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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

On August 25, 2014, Phlx and several other self-regulatory organizations (the "Participants") filed with the Commission, pursuant to Section 11A of the Act³ and Rule 608 of Regulation NMS thereunder,⁴ the Plan to Implement a Tick Size Pilot Program.⁵ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.⁶ The Plan was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.⁷ The Commission approved the Pilot on a two-year basis, with implementation to begin no

³ 15 U.S.C. 78k-1.

⁴ 17 CFR 242.608.

⁵ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁶ See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

⁷ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

later than May 6, 2016.⁸ On November 6, 2015, the SEC exempted the Participants from implementing the Pilot until October 3, 2016.⁹ Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016. On September 13, 2016, the SEC exempted the Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Participants to implement the pilot on a phased-in basis, as described in the Participants' exemptive request.¹⁰

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

Phlx adopted rule amendments to implement the requirements of the Plan, including relating to the Plan's data collection requirements and requirements relating to website data publication.¹¹ Specifically, with respect to the website data publication requirements pursuant to Section VII and Appendices B and C to the Plan, Phlx Rule

⁸ See Approval Order at 27533 and 27545.

⁹ See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

¹⁰ See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; see also Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

¹¹ See, e.g., Securities Exchange Act Release No. 77458 (March 28, 2016), 81 FR 18919 (April 1, 2016) (SR-Phlx-2016-39); see also Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated February 17, 2016.

3317(b)(2)(B) provides, among other things, that Phlx shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph (b)(2) of Rule 3317, publicly available on the Exchange web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Rule 3317(b)(3)(C), provides, among other things, that Phlx shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3) of Rule 3317, publicly available on the Exchange web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Commentary .08 to Rule 3317 provides, among other things, that the requirement that Phlx make certain data publicly available on the Exchange web site pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period.

Phlx is proposing amendments to Rule 3317(b)(2)(B) (regarding Appendix B.I and B.II data) and Rule 3317(b)(3)(C) (regarding Appendix B.IV data) to provide that data required to be made available on Phlx's web site be published within 120 calendar days following month end. In addition, the proposed amendments to Commentary .08 to Rule 3317 would provide that, notwithstanding the provisions of paragraphs (b)(2)(B), (b)(3)(C), and (b)(5), Phlx shall make data for the Pre-Pilot period publicly available on the Phlx web site pursuant to Appendix B and C to the Plan by February 28, 2017.¹²

¹² With respect to data for the Pilot Period, the requirement that Phlx make data publicly available on the Phlx web site pursuant to Appendix B and C to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first website publication date for Pilot Period data (covering October 2016) would be published on the Phlx web site by February 28, 2017, which is 120 days following the end of October 2016.

The purpose of delaying the publication of the website data is to address confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.

Phlx also proposes to amend Rule 3317(b)(4), which relates to the reporting of Market Maker profitability data for members for the Exchange is the Designated Examining Authority (“DEA”). Currently, Rule 3317(b)(4)(A) states that a Member that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions on any Trading Center that have settled or reached settlement date. Information related to Market Maker profitability will be collected by FINRA and transmitted to the SEC and, on an aggregate basis, also be made publicly available.¹³

The Financial Industry Regulatory Authority, Inc. (“FINRA”) recently submitted a proposed rule change amending FINRA Rule 6191(b), which sets forth FINRA’s obligations with respect to data collection and reporting under the Plan. With this rule change, FINRA proposes to publish (1) Market Maker profitability statistics for Market Makers for which FINRA is the DEA; (2) Market Maker profitability statistics collected from other Participants that are DEAs, and (iii) Market Maker profitability statistics for Market Makers whose DEA is not a Participant.¹⁴ As part of its rule change, FINRA also stated that it would make this data publicly available on the FINRA web site within 120 calendar days following month end at no charge. In its proposal, FINRA noted that the publication by FINRA of Market Maker profitability data on the FINRA website,

¹³ See FINRA Rule 6191(b)(4)(B).

¹⁴ See SR-FINRA-2016-042.

including Market Makers for which FINRA is not the DEA, is intended to address confidentiality concerns with respect to the Appendix C data required to be made publicly available by the Participants. Although the Participants that are DEAs also would not have identified the Market Makers when publishing required Appendix C data, FINRA noted that some of the Participants are DEAs for a very small number of Market Makers, and the published data from these DEAs raised concerns regarding the potential for identifying the Market Makers that correspond to those statistics.¹⁵

Although the Exchange is currently a DEA for certain member firms, Rule 3317 does not currently require Phlx as DEA to report the information collected pursuant to paragraph (b)(4) to FINRA for publication. Given FINRA's recent proposed rule change, the Exchange is therefore proposing to adopt Rule 3317(b)(4)(C) to address the reporting of Market Maker profitability data for members for which Phlx is the DEA. Rule 3317(b)(4)(C) states that the Exchange, as DEA, shall collect the data required by Item I of Appendix C to the Plan and paragraph (b)(4)(A) for those Members that are Market Makers for which the Exchange is DEA, and on a monthly basis transmit such data, categorized by the Control Group and each Test Group, to the SEC in a pipe delimited format. Rule 3317(b)(4)(C) also provides that the Exchange, as DEA, shall make the data collected pursuant to subparagraph (4) of Rule 3317(b) available to FINRA for aggregation and publication, categorized by the Control Group and each Test Group, on the FINRA website pursuant to FINRA Rules. Rule 3317(b)(4)(C) does not alter the information required to be submitted to the SEC.

¹⁵ Id.

Finally, Phlx proposes to amend Rule 3317(b)(5), which relates to the collection and transmission of Market Maker registration statistics. Currently, Rule 3317(b)(5) provides that the Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for (1) transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (2) transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. Although the Plan requires that such data be made publicly available,¹⁶ Rule 3317(b)(5) does not currently include a provision requiring the Exchange to publish such data to its website. The Exchange therefore proposes to amend Rule 3317(b)(5) to provide that the Exchange shall make Market Maker registration data publicly available on the Exchange web site within 120 calendar days following month end at no charge.

Phlx has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

¹⁶ See Section VII.A. 4 of the Plan.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, because it is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the SEC.

In approving the Plan, the Commission recognized that requiring the publication of Market Maker data may raise confidentiality concerns, especially for Pilot Securities that may have a relatively small number of designated Market Makers.¹⁹ For this reason, the Commission modified the Plan so that the data that would be made publicly available would not contain profitability measures for each security, but would be aggregated by the Control Group and each Test Group. Phlx believes that this proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting Phlx to delay web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. With respect to the change to Rule 3317(b)(5), the Exchange believes this change will clarify the timing and format of publication of data related to Market Maker registration.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See Approval Order at 27543 - 27544.

Phlx believes that the addition of Rule 3317(b)(4)(C) relating to the reporting of Market Maker profitability data to FINRA is consistent with the Act because it effectuates FINRA's recent proposal, which itself is designed to further address confidentiality concerns by permitting FINRA to aggregate and publish Market Maker profitability data for all Participant DEAs, including Market Makers for which FINRA is not the DEA.²⁰ Phlx notes that this proposal also does not alter the information required to be submitted to the SEC.

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. Phlx notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition, especially for Pilot Securities that may have a relatively small number of designated Market Makers, by (1) permitting Phlx to delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information; and (2) making Market Maker profitability statistics that Phlx has gathered as DEA available to FINRA for aggregation and publication. The proposal also does not alter the information required to be submitted to the SEC.

²⁰ See SR-FINRA-2016-042.

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.²¹

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²² and subparagraph (f)(6) of Rule 19b-4 thereunder.²³

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

²¹ Phlx notes that Financial Information Forum (FIF) submitted a letter to the staff of the Commission raising concerns regarding the publication of certain Appendix B statistics on a disaggregated basis using a unique masked market participant identifier. See Letter from Mary Lou Von Kaenel, Managing Director, FIF, to David S. Shillman, Associate Director, Division of Trading and Markets, Commission, dated August 16, 2016, available at <https://www.fif.com/comment-letters>.

²² 15 U.S.C. 78s(b)(3)(A)(iii).

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

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2016-118 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2016-118. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the

Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2016-118 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Robert W. Errett
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

NASDAQ PHLX Rules

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NASDAQ OMX PSX RULES

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3317. Compliance with Regulation NMS Plan to Implement a Tick Size Pilot

(a) No Change.

(b) Compliance with Data Collection Requirements

(1) No Change.

(2) The Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Securities and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for:

(A) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through thirty-one days prior to the first day of the Pilot Period; and

(B) Each Pilot Security for the period beginning thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange also shall make such data publicly available on the Exchange web site [on a monthly basis]within 120 calendar days following month end at no charge and shall not identify the Member that generated the data.

(3) Daily Market Maker Participation Statistics Requirement

(A) A Member that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan, with respect to activity conducted on any Trading Center in Pre-Pilot Securities and Pilot Securities in furtherance of its status as a Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. Market Makers shall transmit such data in a format required by their DEA by 12:00 p.m. EST on T+4:

- (i) For transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through thirty-one days prior to the first day of the Pilot Period; and
 - (ii) For transactions in each Pilot Security for the period beginning thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period.
- (B) A Member that is a Market Maker whose DEA is not a Participant to the Plan shall transmit the data collected pursuant to paragraph (3)(A) above to the Financial Industry Regulatory Authority, Inc. (“FINRA”). Market Makers shall transmit such data in a format required by FINRA by 12:00 p.m. EST on T+4 in accordance with paragraphs (3)(A)(i) and (ii) above.
- (C) The Exchange shall transmit the data collected by the DEA or FINRA pursuant to paragraphs (3)(A) and (B) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The Exchange shall also make such data publicly available on the Exchange web site [on a monthly basis within 120 calendar days following month end at no charge and shall not identify the Trading Center that generated the data.

(4) Market Maker Profitability

- (A) A Member that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions on any Trading Center that have settled or reached settlement date. Market Makers shall transmit such data in a format required by their DEA by 12:00 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each:
- (i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through thirty-one days prior to the first day of the Pilot Period; and
 - (ii) Pilot Security for the period beginning thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period.
- (B) A Member that is a Market Maker whose DEA is not a Participant to the Plan shall transmit the data collected pursuant to paragraph (4)(A) above to FINRA. Market Makers shall transmit such data in a format required by FINRA by 12:00 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in accordance with paragraphs (4)(A)(i) and (ii) above.

(C) The Exchange, as DEA, shall collect the data required by Item I of Appendix C to the Plan and paragraph (b)(4)(A) above for those Members that are Market Makers for which the Exchange is DEA, and on a monthly basis transmit such data, categorized by the Control Group and each Test Group, to the SEC in a pipe delimited format. The Exchange, as DEA, shall also make the data collected pursuant to subparagraph (4) of Rule 3317(b) available to FINRA for aggregation and publication, categorized by the Control Group and each Test Group, on the FINRA website pursuant to FINRA Rules.

(5) Market Maker Registration Statistics. The Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for:

(A) For transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and

(B) For transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange also shall make such data publicly available on the Exchange web site within 120 calendar days following month end at no charge.

(c) – (d) No change.

Commentary:

.01 through .07 No Change.

.08 A Trading Center shall begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. The requirement that the Exchange or their DEA provide information to the SEC within 30 days following month end [and make certain data publicly available on the Exchange's or DEA's web site]pursuant to Appendix B and C of the Plan shall commence at the beginning of the Pilot Period. With respect to data for the Pilot Period, the requirement that the Exchange make certain data publicly available on the Exchange's web site pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period. Notwithstanding the provisions of paragraphs (b)(2)(B), (b)(3)(C) and (b)(5) of this Rule, the Exchange shall make data for the Pre-Pilot Period publicly available on the Exchange web site pursuant to Appendix B and C to the Plan by February 28, 2017.

.09 through .14 No Change.

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