

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="25"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2016"/> - * <input type="text" value="64"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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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"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<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	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

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 *).

Proposal to amend the Exchange Pricing Schedule under Section VIII, entitled NASDAQ OMX PSX FEES.

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 * <input type="text" value="Sean"/>	Last Name * <input type="text" value="Bennett"/>
Title * <input type="text" value="Principal Associate General Counsel"/>	
E-mail * <input type="text" value="Sean.Bennett@nasdaq.com"/>	
Telephone * <input type="text" value="(301) 978-8499"/>	Fax <input type="text"/>

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 <input type="text" value="05/31/2016"/>	<input type="text" value="Executive Vice President and General Counsel"/>
By <input type="text" value="Edward S. Knight"/>	<input type="text" value="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 *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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

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

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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

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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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

Add Remove View

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

Partial Amendment

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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 (“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 (“Commission”) a proposal to amend the Exchange’s Pricing Schedule under Section VIII, entitled “NASDAQ OMX PSX FEES,” with respect to execution and routing of orders in securities priced at \$1 or more per share.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on June 1, 2016.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on July 1, 2015. 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:

T. Sean Bennett
Principal Associate General Counsel
Nasdaq, Inc.
(301) 978-8499

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 change is to amend certain charges and credits for the use of the order execution and routing services of the NASDAQ OMX PSX System ("PSX") by member organizations for all securities traded at \$1 or more per share. The Exchange is proposing to: (1) add an additional Consolidated Volume³ requirement to the existing fee tiers assessed a member organization that enters an order that executes in PSX; (2) add an new default fee assessed a member organization that enters an order that executes in PSX in the security of any Tape⁴ of \$0.0030 per share executed; and (3) delete text from the preamble of paragraph (a)(1) of Section VIII, Order Execution and Routing concerning Consolidated Volume.

First Change

The purpose of the first change is to add a new requirement to qualify for each of the existing fee tiers assessed a member organization that enters an order that executes in PSX. The Exchange currently assesses a member organization a fee of \$0.0029 per share

³ Consolidated Volume is defined as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of, or ratio to, Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. See of Section VIII, Order Execution and Routing, paragraph (a)(1).

⁴ There are three Tapes, which are based on the listing venue of the security: Tape C securities are Nasdaq-listed; Tape A securities are New York Stock Exchange-listed securities; and Tape B securities are listed on exchanges other than Nasdaq and NYSE.

executed in Nasdaq-listed securities (“Tape C”), and fee of \$0.0028 per share executed in NYSE-Listed Securities (“Tape A”) and in securities listed on exchanges other than Nasdaq and NYSE (“Tape B”). These fees currently do not require a member organization to have met a performance measure in return for the fees, but rather are the “default” fees assessed for removal of liquidity from PSX. In light of the proposed new \$0.0030 default removal fee discussed below, the Exchange is proposing to add a Consolidated Volume-based requirement to the existing fee tiers in order to qualify for the now-lower charges assessed member organizations for removing liquidity. Specifically, the Exchange is proposing to require a member organization to access 0.065% or more of Consolidated Volume during the month to be eligible to receive the lower charges assessed under the fee tiers.

Second Change

The purpose of the second change is to add a new default fee assessed a member organization that enters an order that executes in PSX in the security of any Tape. Currently, a member organization is assessed a fee of \$0.0029 per share executed in Tape C securities, and fee of \$0.0028 per share executed in Tape A and Tape B securities. The Exchange is proposing to assess a member organization that enters an order that executes in PSX a fee of \$0.0030 per share executed in a security of any Tape.

Third Change

The purpose of the third change is to delete rule text from the preamble of paragraph (a)(1) of Section VIII, Order Execution and Routing, concerning Consolidated Volume. The rule currently defines Consolidated Volume as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade

reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. The Exchange excludes from the calculations of fees and credits that have a Consolidated Volume component all trading that occurs on the date of the annual reconstitution of the Russell Investments. The annual reconstitution represents a day of abnormal trading volume, as the Russell Investment indexes adjust holdings to accurately reflect the current state of equity markets and their market segments.⁵

Consequently, the Exchange excludes the date of the Russell Investment reconstitution in all calculations of fees and credits because it is not reflective of a member organization's normal trading. The Exchange expresses this under the rule by stating that, “[f]or purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of, or ratio to, Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.” The Exchange believes that the text stating “expressed as a percentage of, or ratio to, Consolidated Volume” may be confusing to market participants in understanding how the Exchange excludes trading activity on the day of the Russell Investment reconstitution should the Exchange ever adopt a fee or credit tier based on a different measure of Consolidated Volume.

Specifically, the Exchange seeks to clarify that all trading activity on the date of the Russell Investment reconstitution (including trading activity not based on a percentage or ratio of Consolidated Volume) is excluded from a member's trading activity for determining credit and fee tiers. This proposed change has no impact on PSX at this time, as all tiers under the rule are currently expressed as a percentage of Consolidated

⁵ See <https://www.ftserussell.com/research-insights/russell-reconstitution>.

Volume; however, if the Exchange adopted a new metric, such as a certain nominal level of share volume (e.g., a requirement to add 5 million shares), the Exchange wants to ensure that member organizations understand that all trading activity on the day of the Russell Investment reconstitution would be excluded for purposes of determining what fees and credits a member qualifies for.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act⁷ 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 or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed increases to the credits and charges in the fee schedule under the Exchange's Pricing Schedule under Section VIII are reflective of the Exchange's ongoing efforts to use pricing incentives to attract order flow to the Exchange and improve market quality, while also providing a profit to the Exchange through the operation of its market.

First Change

The Exchange believes that the proposed new requirement to qualify for each of the existing fee tiers assessed a member organization that enters an order that executes in PSX is reasonable because the Exchange is providing member organizations the ability to continue to have the ability to qualify for current lower removal fees. The Exchange uses

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

credits and reduced fees to provide incentive to market participants to improve the markets. In the present case, the Exchange is adding to each of the existing fee tiers under the rule a new requirement that a member organization access 0.065% or more of Consolidated Volume during the month. Removal of liquidity adds to the price discovery process and therefore benefits all market participants. Consequently, the Exchange believes that requiring member organizations to improve the market through the removal of liquidity by a certain level of Consolidated Volume in return for lower liquidity removal fees is reasonable.

The Exchange believes that the proposed new requirement to qualify for each of the lower fee tiers assessed a member organization that enters an order that executes in PSX is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. The Exchange is not proposing to adjust the fee assessed for removal of the securities of each Tape, but rather is adding a new Consolidated Volume-based requirement in light of the proposed new \$0.0030 per share executed fee, which will be the new “default” rate assessed member organizations for removal of liquidity. Thus, to qualify for a reduced fee in any of the amended fee tiers, a member organization must access 0.065% or more of Consolidated Volume during the month.

Second Change

The Exchange believes that the new base removal fee is reasonable because although it will increase the fee assessed to access liquidity on the Exchange, it is identical to the fee assessed by The NASDAQ Stock Market LLC (“Nasdaq”) for

removing liquidity in the securities of any Tape from the Nasdaq Market Center.⁸ As a general principle, the Exchange must, from time to time, adjust the level of fees and credits provided to most efficiently allocate such fees and credits in terms of market-improving behavior. In this regard, the Exchange is limited in how far it may reduce fees and in the amount of credits that it can provide to market participants. In the present case, the Exchange has observed high levels of liquidity removal on PSX sufficient to allow the Exchange to increase removal fees, which will allow the Exchange to offer credits for market-improving behavior, and to realize a greater profit.

The Exchange believes that the increased removal fee is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. In this regard, the Exchange notes that the fee is uniform across the securities of all three Tapes. In addition, the Exchange will offer reduced fees for removal of liquidity, but in return for market improving behavior. Last, the Exchange believes that increasing the fee assessed does not discriminate unfairly because it is a modest increase that is consistent with the fee assessed for removing liquidity at other exchanges.

Third Change

The Exchange believes that deleting rule text from the preamble of paragraph (a)(1) of Section VIII, Order Execution and Routing, concerning Consolidated Volume is reasonable because it will help clarify how credit and fee tiers that rely on a calculation of Consolidated Volume will be handled by the Exchange during the annual Russell Indexes reconstitution. Currently, the rule text could be interpreted to apply to only a member

⁸ See Nasdaq Rules 7018(a)(1) – (3).

organization's trading activity under a fee or credit tier that is expressed as a ratio or percentage of Consolidated Volume. The Exchange believes that, should it ever adopt a credit or fee tier based on another measure of Consolidated Volume, such an interpretation would undermine the Exchange's intent to exclude the abnormal trading activity that occurs on that day. Accordingly, the Exchange believes that it is reasonable to remove the potentially confusing rule text.

The Exchange believes that deleting rule text from the preamble of paragraph (a)(1) of Section VIII, Order Execution and Routing, concerning Consolidated Volume is an equitable allocation and is not unfairly discriminatory because the proposed change only serves to clarify the application of the rule and does not alter how Consolidated Volume is calculated. Thus, the Exchange will apply the same process to all similarly situated member organizations that seek to qualify under a fee or credit tier under the rule that relies on a calculation of Consolidated Volume.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing

practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the changes to the fees assessed for removing liquidity do not impose a burden on competition because the Exchange membership is optional and is the subject of competition from other exchanges. The increased charges are reflective of the intent to balance the fees that it assesses with the order flow it receives. For these reasons, the Exchange does not believe that any of the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants. As noted above, the proposed changes are consistent with similar fees assessed members of other markets.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁹ The Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

Based in part on fees assessed by Nasdaq under Nasdaq Rule 7018(a)(1) – (3) for all other orders that execute in the Nasdaq Market Center.

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-2016-64)

June __, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule under Section VIII

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 31, 2016, NASDAQ PHLX LLC ("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 Pricing Schedule under Section VIII, entitled "NASDAQ OMX PSX FEES," with respect to execution and routing of orders in securities priced at \$1 or more per share.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxphlx.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

The purpose of the proposed rule change is to amend certain charges and credits for the use of the order execution and routing services of the NASDAQ OMX PSX System ("PSX") by member organizations for all securities traded at \$1 or more per share. The Exchange is proposing to: (1) add an additional Consolidated Volume³ requirement to the existing fee tiers assessed a member organization that enters an order that executes in PSX; (2) add a new default fee assessed a member organization that enters an order that executes in PSX in the security of any Tape⁴ of \$0.0030 per share

³ Consolidated Volume is defined as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of, or ratio to, Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. See of Section VIII, Order Execution and Routing, paragraph (a)(1).

⁴ There are three Tapes, which are based on the listing venue of the security: Tape C securities are Nasdaq-listed; Tape A securities are New York Stock Exchange-listed securities; and Tape B securities are listed on exchanges other than Nasdaq and NYSE.

executed; and (3) delete text from the preamble of paragraph (a)(1) of Section VIII, Order Execution and Routing concerning Consolidated Volume.

First Change

The purpose of the first change is to add a new requirement to qualify for each of the existing fee tiers assessed a member organization that enters an order that executes in PSX. The Exchange currently assesses a member organization a fee of \$0.0029 per share executed in Nasdaq-listed securities (“Tape C”), and fee of \$0.0028 per share executed in NYSE-Listed Securities (“Tape A”) and in securities listed on exchanges other than Nasdaq and NYSE (“Tape B”). These fees currently do not require a member organization to have met a performance measure in return for the fees, but rather are the “default” fees assessed for removal of liquidity from PSX. In light of the proposed new \$0.0030 default removal fee discussed below, the Exchange is proposing to add a Consolidated Volume-based requirement to the existing fee tiers in order to qualify for the now-lower charges assessed member organizations for removing liquidity. Specifically, the Exchange is proposing to require a member organization to access 0.065% or more of Consolidated Volume during the month to be eligible to receive the lower charges assessed under the fee tiers.

Second Change

The purpose of the second change is to add a new default fee assessed a member organization that enters an order that executes in PSX in the security of any Tape. Currently, a member organization is assessed a fee of \$0.0029 per share executed in Tape C securities, and fee of \$0.0028 per share executed in Tape A and Tape B securities. The

Exchange is proposing to assess a member organization that enters an order that executes in PSX a fee of \$0.0030 per share executed in a security of any Tape.

Third Change

The purpose of the third change is to delete rule text from the preamble of paragraph (a)(1) of Section VIII, Order Execution and Routing, concerning Consolidated Volume. The rule currently defines Consolidated Volume as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. The Exchange excludes from the calculations of fees and credits that have a Consolidated Volume component all trading that occurs on the date of the annual reconstitution of the Russell Investments. The annual reconstitution represents a day of abnormal trading volume, as the Russell Investment indexes adjust holdings to accurately reflect the current state of equity markets and their market segments.⁵

Consequently, the Exchange excludes the date of the Russell Investment reconstitution in all calculations of fees and credits because it is not reflective of a member organization's normal trading. The Exchange expresses this under the rule by stating that, “[f]or purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of, or ratio to, Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.” The Exchange believes that the text stating “expressed as a percentage of, or ratio to, Consolidated Volume” may be confusing to market participants in understanding how the Exchange excludes trading

⁵ See <https://www.ftserussell.com/research-insights/russell-reconstitution>.

activity on the day of the Russell Investment reconstitution should the Exchange ever adopt a fee or credit tier based on a different measure of Consolidated Volume.

Specifically, the Exchange seeks to clarify that all trading activity on the date of the Russell Investment reconstitution (including trading activity not based on a percentage or ratio of Consolidated Volume) is excluded from a member's trading activity for determining credit and fee tiers. This proposed change has no impact on PSX at this time, as all tiers under the rule are currently expressed as a percentage of Consolidated Volume; however, if the Exchange adopted a new metric, such as a certain nominal level of share volume (e.g., a requirement to add 5 million shares), the Exchange wants to ensure that member organizations understand that all trading activity on the day of the Russell Investment reconstitution would be excluded for purposes of determining what fees and credits a member qualifies for.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act⁷ 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 or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed increases to the credits and charges in the fee schedule under the Exchange's Pricing Schedule under Section VIII are reflective of the Exchange's ongoing

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

efforts to use pricing incentives to attract order flow to the Exchange and improve market quality, while also providing a profit to the Exchange through the operation of its market.

First Change

The Exchange believes that the proposed new requirement to qualify for each of the existing fee tiers assessed a member organization that enters an order that executes in PSX is reasonable because the Exchange is providing member organizations the ability to continue to have the ability to qualify for current lower removal fees. The Exchange uses credits and reduced fees to provide incentive to market participants to improve the markets. In the present case, the Exchange is adding to each of the existing fee tiers under the rule a new requirement that a member organization access 0.065% or more of Consolidated Volume during the month. Removal of liquidity adds to the price discovery process and therefore benefits all market participants. Consequently, the Exchange believes that requiring member organizations to improve the market through the removal of liquidity by a certain level of Consolidated Volume in return for lower liquidity removal fees is reasonable.

The Exchange believes that the proposed new requirement to qualify for each of the lower fee tiers assessed a member organization that enters an order that executes in PSX is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. The Exchange is not proposing to adjust the fee assessed for removal of the securities of each Tape, but rather is adding a new Consolidated Volume-based requirement in light of the proposed new \$0.0030 per share executed fee, which will be the new “default” rate assessed member organizations for removal of liquidity. Thus, to qualify for a reduced fee in any of the amended fee

tiers, a member organization must access 0.065% or more of Consolidated Volume during the month.

Second Change

The Exchange believes that the new base removal fee is reasonable because although it will increase the fee assessed to access liquidity on the Exchange, it is identical to the fee assessed by The NASDAQ Stock Market LLC (“Nasdaq”) for removing liquidity in the securities of any Tape from the Nasdaq Market Center.⁸ As a general principle, the Exchange must, from time to time, adjust the level of fees and credits provided to most efficiently allocate such fees and credits in terms of market-improving behavior. In this regard, the Exchange is limited in how far it may reduce fees and in the amount of credits that it can provide to market participants. In the present case, the Exchange has observed high levels of liquidity removal on PSX sufficient to allow the Exchange to increase removal fees, which will allow the Exchange to offer credits for market-improving behavior, and to realize a greater profit.

The Exchange believes that the increased removal fee is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. In this regard, the Exchange notes that the fee is uniform across the securities of all three Tapes. In addition, the Exchange will offer reduced fees for removal of liquidity, but in return for market improving behavior. Last, the Exchange believes that increasing the fee assessed does not discriminate unfairly because it is a modest increase that is consistent with the fee assessed for removing liquidity at other exchanges.

⁸ See Nasdaq Rules 7018(a)(1) – (3).

Third Change

The Exchange believes that deleting rule text from the preamble of paragraph (a)(1) of Section VIII, Order Execution and Routing, concerning Consolidated Volume is reasonable because it will help clarify how credit and fee tiers that rely on a calculation of Consolidated Volume will be handled by the Exchange during the annual Russell Indexes reconstitution. Currently, the rule text could be interpreted to apply to only a member organization's trading activity under a fee or credit tier that is expressed as a ratio or percentage of Consolidated Volume. The Exchange believes that, should it ever adopt a credit or fee tier based on another measure of Consolidated Volume, such an interpretation would undermine the Exchange's intent to exclude the abnormal trading activity that occurs on that day. Accordingly, the Exchange believes that it is reasonable to remove the potentially confusing rule text.

The Exchange believes that deleting rule text from the preamble of paragraph (a)(1) of Section VIII, Order Execution and Routing, concerning Consolidated Volume is an equitable allocation and is not unfairly discriminatory because the proposed change only serves to clarify the application of the rule and does not alter how Consolidated Volume is calculated. Thus, the Exchange will apply the same process to all similarly situated member organizations that seek to qualify under a fee or credit tier under the rule that relies on a calculation of Consolidated Volume.

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

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

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

In this instance, the changes to the fees assessed for removing liquidity do not impose a burden on competition because the Exchange membership is optional and is the subject of competition from other exchanges. The increased charges are reflective of the intent to balance the fees that it assesses with the order flow it receives. For these reasons, the Exchange does not believe that any of the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants. As noted above, the proposed changes are consistent with similar fees assessed members of other markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2016-64 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.

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2016-64. 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-2016-64 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.¹⁰

Robert W. Errett
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

NASDAQ PHLX Rules

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VIII. NASDAQ PSX FEES

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Order Execution and Routing

(a) The following charges and credits shall apply to the use of the order execution and routing services of the NASDAQ PSX System by member organizations for all securities that it trades priced at \$1 or more per share:

(1) Fees for Execution of Quotes/Orders in Nasdaq-Listed Securities, Securities Listed on the New York Stock Exchange (“NYSE”) and Securities Listed on Exchanges other than Nasdaq and NYSE. As used in this rule, the term “Consolidated Volume” shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member’s trading activity[, expressed as a percentage of, or ratio to, Consolidated Volume,] the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member’s trading activity.

Charge to member organization entering order that executes in NASDAQ PSX:	\$0.0029 per share executed in Nasdaq-Listed Securities <u>entered by a member organization that accesses 0.065% or more of Consolidated Volume during the month</u>
	\$0.0028 per share executed in NYSE-Listed Securities <u>entered by a member organization that accesses 0.065% or more of Consolidated Volume during the month</u>
	\$0.0028 per share executed in Securities Listed on Exchanges other than Nasdaq and NYSE <u>entered by a member organization that accesses 0.065% or more of Consolidated Volume during the month</u>
	<u>\$0.0030 per share executed for all other member organizations</u>

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(2) No change.

(b) No change.

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