

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 * <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"/>
Pilot <input type="checkbox"/>			Rule		
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 \*).

A proposal to amend Chapter VI, Section A of its Pricing Schedule relating to the Exchange monthly permit fees for PSX only members.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Brett      Last Name \* Kitt  
 Title \* Senior Associate General Counsel  
 E-mail \* Brett.Kitt@nasdaq.com  
 Telephone \* (301) 978-8132      Fax

**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 \*)  
 Executive Vice President and General Counsel

Date 07/31/2017  
 By Edward S. Knight  
 (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 \***

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**

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Chapter VI, Section A of its Pricing Schedule relating to the Exchange’s monthly permit fees for PSX only members, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on August 1, 2017.

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 August 15, 2016. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

Brett M. Kitt  
Senior Associate General Counsel  
Nasdaq, Inc.  
(301) 978-8132.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

a. Purpose

The Exchange proposes to amend Chapter VI, Section A of its Pricing Schedule to add a new exemption from the \$4,000 per month "PSX Only Permit Fee" that the Exchange assesses to "PSX only" members and member organizations. A "PSX only" member or member organization is one that only does business only on PSX and not on the PHLX options market.

Presently, the Exchange waives this Permit Fee if a PSX only member or member organization executes at least 1,000 shares per day, on average, in a given month. The Exchange proposes to also waive the Permit Fee during any month in which a PSX only member's or member organization's business on the Exchange is limited to "clearing-only." For the purpose of the proposal, the term "clearing-only" means that the PSX only member or member organization: (1) does not execute any trades on PSX throughout a given month; (2) maintains no active connections to execute trades on PSX during that month (either through its own MPID or through a sponsored access relationship on behalf of another member or member organization); and (3) maintains PSX membership for the sole purpose of clearing trades on behalf of another member or member organization that is actively trading on PSX.

The purpose of the proposal is to enhance its fee structure for members and member organizations that limit their business on the Exchange during a given month to only clearing trades on behalf of others. The Exchange has determined that assessing clearing-only members and member organizations a monthly PSX Only Permit Fee is unnecessary given that the PSX Only Permit Fee exists for two purposes that do not

apply to those that engage in clearing-only. First, the PSX Only Permit Fee serves as the price that members and member organizations pay for the privilege of executing trades on PSX. However, unlike other PSX members and member organizations, clearing firms do not obtain their PSX membership to execute trades and they do not, in fact, execute trades on PSX. The PSX Only Permit Fee also exists to defray the costs that the Exchange incurs to examine and oversee those of its members and member organizations for which the Exchange acts as the Designated Examination Authority. Again, however, the Exchange does not serve as the Designated Examination Authority for clearing-only firms and it therefore does not incur these costs.

Moreover, the Exchange believes that the assessment of the monthly PSX Only Permit Fee to clearing-only members and member organizations serves as a disincentive for clearing firms to provide their valuable services to other Exchange members and member organizations. The Exchange wishes to encourage, rather than discourage, clearing firms to participate on the Exchange. Indeed, the Exchange hopes that waiving the PSX Only Permit Fee for clearing-only members and member organizations will not only attract new clearing firms to PSX, but it will also more generally attract additional trading participation and trading on PSX. This proposal is part of an effort to nurture the growth of PSX.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>4</sup> in

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<sup>3</sup> 15 U.S.C. 78f(b).

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

particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>5</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>6</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>7</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>8</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and

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<sup>5</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>6</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>7</sup> See NetCoalition, at 534 - 535.

<sup>8</sup> Id. at 537.

the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>9</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that waiving the monthly PSX Only Permit Fee for clearing-only members and member organization is reasonable because no justification exists for charging this Fee to members and member organizations that do not use their membership to execute trades on PSX and are not subject to examination by the Exchange. The Exchange also believes that its definition of “clearing-only” is reasonable because it excludes those firms that are PSX members for purposes other than simply to clear transactions, those that execute even small volumes of trades during a given month, and even those that maintain an active capacity to execute trades during a month, either through its own MPID or through a sponsored access relationship. Finally, the Exchange proposes reasonable steps to ensure that those clearing firms that request waivers of the PSX Only Permit Fee in fact qualify for the waiver. It will require such firms to attest in writing to their “clearing-only” status as a condition of the Exchange granting them the waiver. The attestation form will also obligate firms to promptly notify the Exchange of any change in their statuses.

The Exchange believes that the proposal is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee waiver to all

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<sup>9</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

similarly situated members and member organizations that utilize their membership on the Exchange only to engage in clearing activities. Moreover, the Exchange believes that its proposal does not discriminate against PSX only members and member organizations that execute trades on PSX because such members and member organizations can and typically do qualify for their own waivers of the monthly Permit Fee when, in a given month, they meet or exceed an average daily trading threshold of 1,000 shares. When PSX only members and member organizations do not meet or exceed this monthly trading threshold, the Exchange believes that it is justified in continuing to charge them the Permit Fee insofar as the transaction fees they generate for the Exchange are not sufficient to offset their shares of the Exchange's regulatory oversight costs.<sup>10</sup>

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

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<sup>10</sup> See also Securities Exchange Act Release No. 34-72784 (Aug. 7, 2014), 79 FR 47506 (Aug. 13, 2014) (discussing the Exchange's rationale for its existing PSX Only Permit Fee waiver).



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 proposed waiver of the monthly PSX Only Permit Fee will not impose any burden on competition. To the contrary, the Exchange believes that its proposal is pro-competitive because it may encourage additional clearing firms to provide clearing services on the Exchange, which in turn may attract additional trading participants and trading activity.

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

No written comments were either solicited or received

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>11</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

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

Not applicable.

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

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.
3. Form of attestation of “clearing-only” status of PSX only member or member organization
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2017-63)

August \_\_, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Chapter VI, Section A of its Pricing Schedule Relating to the Exchange's Monthly Permit Fees for PSX Only Members

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 31, 2017, 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 Chapter VI, Section A of its Pricing Schedule relating to the Exchange's monthly permit fees for PSX only members. 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.

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

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

<sup>2</sup> 17 CFR 240.19b-4.

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

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

1. Purpose

The Exchange proposes to amend Chapter VI, Section A of its Pricing Schedule to add a new exemption from the \$4,000 per month "PSX Only Permit Fee" that the Exchange assesses to "PSX only" members and member organizations. A "PSX only" member or member organization is one that only does business only on PSX and not on the PHLX options market.

Presently, the Exchange waives this Permit Fee if a PSX only member or member organization executes at least 1,000 shares per day, on average, in a given month. The Exchange proposes to also waive the Permit Fee during any month in which a PSX only member's or member organization's business on the Exchange is limited to "clearing-only." For the purpose of the proposal, the term "clearing-only" means that the PSX only member or member organization: (1) does not execute any trades on PSX throughout a given month; (2) maintains no active connections to execute trades on PSX during that month (either through its own MPID or through a sponsored access relationship on behalf of another member or member organization); and (3) maintains PSX membership for the sole purpose of clearing trades on behalf of another member or member organization that is actively trading on PSX.

The purpose of the proposal is to enhance its fee structure for members and member organizations that limit their business on the Exchange during a given month to

only clearing trades on behalf of others. The Exchange has determined that assessing clearing-only members and member organizations a monthly PSX Only Permit Fee is unnecessary given that the PSX Only Permit Fee exists for two purposes that do not apply to those that engage in clearing-only. First, the PSX Only Permit Fee serves as the price that members and member organizations pay for the privilege of executing trades on PSX. However, unlike other PSX members and member organizations, clearing firms do not obtain their PSX membership to execute trades and they do not, in fact, execute trades on PSX. The PSX Only Permit Fee also exists to defray the costs that the Exchange incurs to examine and oversee those of its members and member organizations for which the Exchange acts as the Designated Examination Authority. Again, however, the Exchange does not serve as the Designated Examination Authority for clearing-only firms and it therefore does not incur these costs.

Moreover, the Exchange believes that the assessment of the monthly PSX Only Permit Fee to clearing-only members and member organizations serves as a disincentive for clearing firms to provide their valuable services to other Exchange members and member organizations. The Exchange wishes to encourage, rather than discourage, clearing firms to participate on the Exchange. Indeed, the Exchange hopes that waiving the PSX Only Permit Fee for clearing-only members and member organizations will not only attract new clearing firms to PSX, but it will also more generally attract additional trading participation and trading on PSX. This proposal is part of an effort to nurture the growth of PSX.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>4</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>5</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>6</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>7</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’

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<sup>3</sup> 15 U.S.C. 78f(b).

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

<sup>5</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>6</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>7</sup> See NetCoalition, at 534 - 535.

play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>8</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>9</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that waiving the monthly PSX Only Permit Fee for clearing-only members and member organization is reasonable because no justification exists for charging this Fee to members and member organizations that do not use their membership to execute trades on PSX and are not subject to examination by the Exchange. The Exchange also believes that its definition of “clearing-only” is reasonable because it excludes those firms that are PSX members for purposes other than simply to clear transactions, those that execute even small volumes of trades during a given month, and even those that maintain an active capacity to execute trades during a month, either through its own MPID or through a sponsored access relationship. Finally, the Exchange proposes reasonable steps to ensure that those clearing firms that request waivers of the PSX Only Permit Fee in fact qualify for the waiver. It will require such firms to attest in

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<sup>8</sup> Id. at 537.

<sup>9</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

writing to their “clearing-only” status as a condition of the Exchange granting them the waiver. The attestation form will also obligate firms to promptly notify the Exchange of any change in their statuses.

The Exchange believes that the proposal is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee waiver to all similarly situated members and member organizations that utilize their membership on the Exchange only to engage in clearing activities. Moreover, the Exchange believes that its proposal does not discriminate against PSX only members and member organizations that execute trades on PSX because such members and member organizations can and typically do qualify for their own waivers of the monthly Permit Fee when, in a given month, they meet or exceed an average daily trading threshold of 1,000 shares. When PSX only members and member organizations do not meet or exceed this monthly trading threshold, the Exchange believes that it is justified in continuing to charge them the Permit Fee insofar as the transaction fees they generate for the Exchange are not sufficient to offset their shares of the Exchange’s regulatory oversight costs.<sup>10</sup>

**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

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<sup>10</sup> See also Securities Exchange Act Release No. 34-72784 (Aug. 7, 2014), 79 FR 47506 (Aug. 13, 2014) (discussing the Exchange’s rationale for its existing PSX Only Permit Fee waiver).



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 proposed waiver of the monthly PSX Only Permit Fee will not impose any burden on competition. To the contrary, the Exchange believes that its proposal is pro-competitive because it may encourage additional clearing firms to provide clearing services on the Exchange, which in turn may attract additional trading participants and trading activity.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>11</sup>

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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2017-63 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2017-63. 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-2017-63 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.<sup>12</sup>

Eduardo A. Aleman  
Assistant Secretary

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

**EXHIBIT 3**

FORM OF ATTESTATION OF MEMBER/MEMBER ORGANIZATION  
REQUESTING WAIVER OF PSX ONLY PERMIT FEE DUE TO “CLEARING-  
ONLY” STATUS

[DATE]

On behalf of [MEMBER/MEMBER ORGANIZATION], I hereby attest that, to the best of my knowledge and as of the date herein, [MEMBER/MEMBER ORGANIZATION] qualifies for a waiver of the PSX Only Permit Fee because it is engaged in “clearing only” on PSX, meaning that it: (1) does not execute any trades on PSX throughout a given month; (2) maintains no active connections to do so (either under its own MPID or through a sponsored access relationship on behalf of another PSX member or member organization; and (3) maintains PSX membership for the sole purpose of clearing trades on behalf of another member or member organization that is actively trading on PSX.

I understand and agree that [MEMBER/MEMBER ORGANIZATION] will promptly inform PSX if at any time, its status as a “clearing-only” member or member organization changes or it reasonably expects such status to change.

I am duly authorized to make the foregoing attestation on behalf of [MEMBER/MEMBER ORGANIZATION].

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[AUTHORIZED SIGNATORY]

**EXHIBIT 5**

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

**NASDAQ PHLX Rules**

\* \* \* \* \*

**NASDAQ PHLX LLC PRICING SCHEDULE**

\* \* \* \* \*

**VI. MEMBERSHIP FEES****A. Permit and Registration Fees**

Permit Fees for Phlx Members (per month)

Phlx Permit Fees

Floor Broker Permit Fee	\$3,000
Floor Specialist and Floor Market Maker	\$4,500

Permit Fees for all other member and member organizations, including Remote Specialists and Remote Market Makers: \$4,000 in a given month, unless the member or member organization or member organizations under Common Ownership, executes at least 100 options in a Phlx house account that is assigned to one of the member organizations in a given month, in which case the Permit Fee will be \$2,300 for that month.

PSX Only Permit Fees:

Members and member organizations: \$4,000 in a given month, unless the member or member organization averages at least 1,000 shares executed per day in a given month, or the extent of the member's or member organization's business on PSX is limited to clearing-only, in which case the Permit Fee will be \$0.00. The business of a member or member organization is considering "clearing-only" if it does not execute any trades on PSX throughout a given month, it maintains no active connections to do so (either under its own MPID or through a sponsored access relationship on behalf of another member or member organization), and it maintains PSX membership for the sole purpose of clearing trades on behalf of another member or member organization that is actively trading on PSX.

A member or member organization will pay an additional Permit Fee for each sponsored options participant, which fee will be the Permit Fee that is assessed to the member or member organization sponsoring the options participant.

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## Application Fee\*

\$350

## Application Fee for Lapsed Applications\*

\$350

An applicant will be assessed the Application Fee each time an applicant applies for membership, notwithstanding the fact that the applicant may have been a former permit holder.

## Transfer of Affiliation Fee

\$350

The Exchange will not assess the Initiation Fee on a permit holder who applies to transfer affiliation from one member organization to another member organization if the permit holder continuously held his or her permit without any lapse in membership.

## Account Fee\*

\$50.00 monthly

## Initiation Fee\*

\$1,500

## Inactive Nominee Fee

\$600 for 6 months

The member organization will be assessed \$100 per month for the applicable six month period unless the member organization provides proper notice of its intent to terminate an inactive nominee prior to the first day of the next billing month.

An inactive nominee's status expires after six months unless it has been reaffirmed in writing by the member organization or is sooner terminated. A member organization will be assessed the Inactive Nominee Fee every time the status is reaffirmed. An inactive nominee is also assessed Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in their inactive nominee status. However, an inactive nominee would not be assessed Application and Initiation Fees if such inactive nominee applied for membership without any lapse in that individual's association with a particular member organization. An Inactive Nominee is also assessed the Trading Floor Personnel Registration Fee.

\* Applicants that apply for membership solely to participate in the NASDAQ PSX equities market are not assessed an Application Fee, Initiation Fee, or Account Fee. Should such approved member or member organization subsequently elect to engage in business on Phlx XL II, the Exchange's options platform, the Initiation Fee and Account Fee will apply.

• Permit Fees: The Exchange has established the date of notification of termination of a permit as the date that permit fee billing will cease. Additionally, a permit holder will be billed only one monthly permit fee if the holder transfers from one member organization

to another previously unrelated member organization as a result of a merger, partial sale or other business combination during a monthly permit fee period in order to avoid double billing in the month the merger or business combination occurred.

- The Initiation Fee is imposed on a new member upon the issuance of a permit, notwithstanding the fact that the new member may have been a former permit holder.

**Clerk Fee** \$100 per month

- This Clerk Fee is imposed on any registered on-floor person employed by or associated with a member or member organization pursuant to Rule 1090, including Inactive Nominees pursuant to Rule 925. This fee is not imposed on permit holders.

**B. – D. No change.**

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