

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 25	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2019 - * 19	Amendment No. (req. for Amendments *)
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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 *).

A proposal to amend the Exchanges transaction fees at Equity 7, Section 3 to adopt a Qualified Market Maker Program and a related credit, and to modify two existing 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 * 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 *)

Date 05/01/2019 Global Chief Legal and Policy officer

By Edward S. Knight

(Name *)

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.

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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

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

Add Remove View

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

1. Text of the Proposed Rule Change

(a) Nasdaq PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s transaction fees at Equity 7, Section 3 to adopt a Qualified Market Maker Program and a related credit, and to modify two existing fees, as described further below.

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

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on September 26, 2018. 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 Kitt
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8132.

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 Equity 7, Section 3 to: (i) adopt a Qualified Market Maker Program and a related credit; and (ii) amend two existing fees.

The first purpose of this change is to adopt a Qualified Market Maker ("QMM") Program and a related fee. A QMM is a member organization that makes a significant contribution to market quality by providing liquidity at the national best bid and offer ("NBBO") in a large number of securities for a significant portion of the day. A QMM may be, but is not required to be, a registered market maker in any security; thus, the QMM designation does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker. The designation will, however, reflect the QMM's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities. Thus, the program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO. In return for providing the required contribution of market-improving liquidity, a QMM will be provided with a supplemental credit for executions of displayed orders in securities in Tape A priced at \$1 or more per share that provide liquidity on the Exchange System. Through the use of this incentive, the Exchange hopes to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the program reflects an effort to use financial incentives to encourage

a wider variety of members to make positive commitments to promote market quality. To be designated as a QMM, a member organization must quote at the NBBO at least 10% of the time during regular market hours in an average of at least 750 securities per day during a month. In return for its contributions, the Exchange will provide a credit for executions of displayed orders in securities priced at \$1 or more per share that provide liquidity on the Exchange System. Specifically, the Exchange is proposing to provide a credit of \$0.0002 per share executed with respect to all displayed orders in securities in Tape A priced at \$1 or more per share that provide liquidity. This credit will be in addition to any credit that the Exchange provides under Equity 7, Section 3.

The second purpose of this change is to amend two fees that the Exchange charges to member organizations that enter orders on the Exchange that access more than certain specified volumes during a month. For a member organization that accesses 0.065% or more of Consolidated Volume³ during a month, the Exchange presently charges a fee of \$0.0029 per share executed in Nasdaq-Listed Securities, a fee of \$0.0028 per share executed in NYSE-Listed Securities, and a fee of \$0.0028 per share executed in Securities Listed on Exchanges other than Nasdaq and NYSE. The Exchange also charges a \$0.0030 per share executed fee for all other member organizations.

The Exchange proposes to increase, from \$0.0028 per share executed to \$0.0029 per share executed, its fees in NYSE-listed securities and in securities listed on exchanges

³ As used in Equity 7, Section 3, the term "Consolidated Volume" means 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 the date of the annual reconstitution of the Russell Investments Indexes are excluded from both total Consolidated Volume and the member's trading activity.

other than NYSE and Nasdaq for member organizations that access 0.065% or more of Consolidated Volume during a month. This proposed change will equalize the Exchange's liquidity removal fees for securities in all three Tapes for member organizations that access 0.065% or more of Consolidated Volume during a month. The Exchange will continue to assess a \$0.0030 per share executed fee to all other member organizations that remove liquidity from the Exchange.

b. Statutory Basis

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

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Likewise, in NetCoalition v. Securities and Exchange Commission⁷ (“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.⁸ 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.”⁹

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’”¹⁰ 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 its proposed supplemental \$0.0002 per share executed credit for displayed orders of QMMs in securities in Tape A priced at \$1 or more per share that provide liquidity is reasonable because it is similar to other credits offered by the Exchange for displayed orders that provide liquidity. In addition to the proposed

⁷ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

⁸ See NetCoalition, at 534 - 535.

⁹ Id. at 537.

¹⁰ 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)).

\$0.0002 per share executed credit described above, the Exchange also has other credit tiers for displayed orders ranging from \$0.0030 per share executed to \$0.0023 per share executed. The proposed credit will provide an opportunity to member organizations to receive an additional credit in return for certain levels of participation on the Exchange as measured by quoting at the NBBO. The proposed credit is set at a level that is reflective of the beneficial contributions of market participants that quote significantly at the NBBO for a wide range of symbols. The Exchange believes that it is appropriate to limit applicability of the proposed credit to displayed orders in securities in Tape A insofar as the Exchange seeks to incentivize member organizations to add liquidity to the Exchange in such securities and improve the market therefor.

The Exchange believes that the proposed \$0.0002 per share executed credit and qualification criteria of the QMM Program are an equitable allocation and are not unfairly discriminatory because the Exchange will offer the same credit to all similarly situated member organizations. Moreover, the proposed qualification criteria requires a member to quote significantly at the NBBO therefore contributing to market quality in a meaningful way on the Exchange. Any member organization may quote at the NBBO at the level required by the qualification criteria of the QMM Program. The Exchange notes that Nasdaq and BX also have similar QMM programs in which Nasdaq and BX members are required to quote at the NBBO more than a certain amount of time during regular market hours.¹¹ For these reasons, the Exchange believes that the proposed

¹¹ See Nasdaq Equity 7, Section 114(d); BX Equity 7, Section 118(f). In contrast to the Exchange's proposal, Nasdaq and BX require members to quote at the NBBO more than 25 % of the time. Nasdaq also requires a member to quote at the NBBO in an average of at least 1,000 securities per day during the month, while BX requires a member to quote at the NBBO in an average of at least 400

QMM Program credit and qualification criteria are an equitable allocation and are not unfairly discriminatory.

Likewise, the Exchange believes that it is reasonable to increase its per share executed fees, for orders in securities (i) listed on NYSE and (ii) on exchanges other than NYSE and Nasdaq, which it assesses to member organizations that access at least 0.065% of Consolidated Volume during a month. This proposal will equalize the fees for executions of securities in all three Tapes that the Exchange assesses to members that access liquidity of at least 0.065% of Consolidated Volume in a month.

The proposal is equitable and is not unfairly discriminatory because the Exchange proposes to offer the same credits to all similarly situated members and because the increased fees will be the same for securities in all three Tapes.

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

securities during the month. BX also charges a fee, rather than assesses a credit, due to the fact that it operates on the “taker-maker” model.

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 changes to the Exchange's fees assessed and credits provided to member organizations do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed QMM Program credit provides member organizations with the opportunity to be assessed higher credits for transactions if they improve the market by providing significant quoting at the NBBO in a large number of securities which the Exchange believes will improve market quality. The proposed increases to fees that the Exchange assesses to member organizations that access at least 0.0065% of Consolidated Volume during a month are intended to harmonize these fees for executions of orders in all three Tapes.

In sum, the proposed changes are designed to make the Exchange a more desirable venue on which to transact; however, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹² the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

The proposal is similar to Nasdaq Equity 7, Section 114(d), except that Nasdaq's QMM program requires qualifying members to quote at the NBBO at least 25% of the time during regular market hours in an average of at least 1,000 securities per day during a month, and it provides tiered rebates for orders in all three Tapes that depend upon the provision of liquidity within or above certain consolidated volume thresholds. The proposal is also similar to BX Equity 7, Section 118(f), except that BX requires QMMs to quote at the NBBO at least 25% of the time during regular market hours in an average of at least 400 securities per day during a month, and it assesses an associated fee rather than provides a credit to QMMs.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2019-19)

May __, 2019

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Fees at Equity 7, Section 3 to Adopt a Qualified Market Maker Program and a Related Credit, and to Modify Two Existing Fees

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 1, 2019, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Equity 7, Section 3 to adopt a Qualified Market Maker Program and a related credit, and to modify two existing fees, as described further below. 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

The purpose of the proposed rule change is to amend Equity 7, Section 3 to: (i) adopt a Qualified Market Maker Program and a related credit; and (ii) amend two existing fees.

The first purpose of this change is to adopt a Qualified Market Maker ("QMM") Program and a related fee. A QMM is a member organization that makes a significant contribution to market quality by providing liquidity at the national best bid and offer ("NBBO") in a large number of securities for a significant portion of the day. A QMM may be, but is not required to be, a registered market maker in any security; thus, the QMM designation does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker. The designation will, however, reflect the QMM's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities. Thus, the program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO. In return for providing the required contribution of

market-improving liquidity, a QMM will be provided with a supplemental credit for executions of displayed orders in securities in Tape A priced at \$1 or more per share that provide liquidity on the Exchange System. Through the use of this incentive, the Exchange hopes to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the program reflects an effort to use financial incentives to encourage a wider variety of members to make positive commitments to promote market quality. To be designated as a QMM, a member organization must quote at the NBBO at least 10% of the time during regular market hours in an average of at least 750 securities per day during a month. In return for its contributions, the Exchange will provide a credit for executions of displayed orders in securities priced at \$1 or more per share that provide liquidity on the Exchange System. Specifically, the Exchange is proposing to provide a credit of \$0.0002 per share executed with respect to all displayed orders in securities in Tape A priced at \$1 or more per share that provide liquidity. This credit will be in addition to any credit that the Exchange provides under Equity 7, Section 3.

The second purpose of this change is to amend two fees that the Exchange charges to member organizations that enter orders on the Exchange that access more than certain specified volumes during a month. For a member organization that accesses 0.065% or more of Consolidated Volume³ during a month, the Exchange presently

³ As used in Equity 7, Section 3, the term "Consolidated Volume" means 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 the date of the annual reconstitution of the Russell Investments Indexes are excluded from both total Consolidated Volume and the member's trading activity.

charges a fee of \$0.0029 per share executed in Nasdaq-Listed Securities, a fee of \$0.0028 per share executed in NYSE-Listed Securities, and a fee of \$0.0028 per share executed in Securities Listed on Exchanges other than Nasdaq and NYSE. The Exchange also charges a \$0.0030 per share executed fee for all other member organizations.

The Exchange proposes to increase, from \$0.0028 per share executed to \$0.0029 per share executed, its fees in NYSE-listed securities and in securities listed on exchanges other than NYSE and Nasdaq for member organizations that access 0.065% or more of Consolidated Volume during a month. This proposed change will equalize the Exchange's liquidity removal fees for securities in all three Tapes for member organizations that access 0.065% or more of Consolidated Volume during a month. The Exchange will continue to assess a \$0.0030 per share executed fee to all other member organizations that remove liquidity from the Exchange.

2. Statutory Basis

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

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

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.”⁶

Likewise, in NetCoalition v. Securities and Exchange Commission⁷ (“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.⁸ 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.”⁹

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’ . . .”¹⁰ Although the court

⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁷ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

⁸ See NetCoalition, at 534 - 535.

⁹ Id. at 537.

¹⁰ 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)).

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 its proposed supplemental \$0.0002 per share executed credit for displayed orders of QMMs in securities in Tape A priced at \$1 or more per share that provide liquidity is reasonable because it is similar to other credits offered by the Exchange for displayed orders that provide liquidity. In addition to the proposed \$0.0002 per share executed credit described above, the Exchange also has other credit tiers for displayed orders ranging from \$0.0030 per share executed to \$0.0023 per share executed. The proposed credit will provide an opportunity to member organizations to receive an additional credit in return for certain levels of participation on the Exchange as measured by quoting at the NBBO. The proposed credit is set at a level that is reflective of the beneficial contributions of market participants that quote significantly at the NBBO for a wide range of symbols. The Exchange believes that it is appropriate to limit applicability of the proposed credit to displayed orders in securities in Tape A insofar as the Exchange seeks to incentivize member organizations to add liquidity to the Exchange in such securities and improve the market therefor.

The Exchange believes that the proposed \$0.0002 per share executed credit and qualification criteria of the QMM Program are an equitable allocation and are not unfairly discriminatory because the Exchange will offer the same credit to all similarly situated member organizations. Moreover, the proposed qualification criteria requires a member to quote significantly at the NBBO therefore contributing to market quality in a meaningful way on the Exchange. Any member organization may quote at the NBBO at the level required by the qualification criteria of the QMM Program. The Exchange notes

that Nasdaq and BX also have similar QMM programs in which Nasdaq and BX members are required to quote at the NBBO more than a certain amount of time during regular market hours.¹¹ For these reasons, the Exchange believes that the proposed QMM Program credit and qualification criteria are an equitable allocation and are not unfairly discriminatory.

Likewise, the Exchange believes that it is reasonable to increase its per share executed fees, for orders in securities (i) listed on NYSE and (ii) on exchanges other than NYSE and Nasdaq, which it assesses to member organizations that access at least 0.065% of Consolidated Volume during a month. This proposal will equalize the fees for executions of securities in all three Tapes that the Exchange assesses to members that access liquidity of at least 0.065% of Consolidated Volume in a month.

The proposal is equitable and is not unfairly discriminatory because the Exchange proposes to offer the same credits to all similarly situated members and because the increased fees will be the same for securities in all three Tapes.

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

¹¹ See Nasdaq Equity 7, Section 114(d); BX Equity 7, Section 118(f). In contrast to the Exchange's proposal, Nasdaq and BX require members to quote at the NBBO more than 25 % of the time. Nasdaq also requires a member to quote at the NBBO in an average of at least 1,000 securities per day during the month, while BX requires a member to quote at the NBBO in an average of at least 400 securities during the month. BX also charges a fee, rather than assesses a credit, due to the fact that it operates on the "taker-maker" model.

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 proposed changes to the Exchange's fees assessed and credits provided to member organizations do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed QMM Program credit provides member organizations with the opportunity to be assessed higher credits for transactions if they improve the market by providing significant quoting at the NBBO in a large number of securities which the Exchange believes will improve market quality. The proposed increases to fees that the Exchange assesses to member organizations that access at least 0.0065% of Consolidated Volume during a month are intended to harmonize these fees for executions of orders in all three Tapes.

In sum, the proposed changes are designed to make the Exchange a more desirable venue on which to transact; however, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will

impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹²

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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2019-19 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-2019-19. 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-2019-19 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.¹³

Eduardo A. Aleman
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq PHLX Rules

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EQUITY RULES

Equity 7 Pricing Schedule

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Section 3 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 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 entered by a member organization that accesses 0.065% or more of Consolidated Volume during the month
	\$0.002[8]9 per share executed in NYSE-Listed Securities entered by a member organization that accesses 0.065% or more of Consolidated Volume during the month
	\$0.002[8]9 per share executed in Securities Listed on Exchanges other than Nasdaq and NYSE entered by a

member organization that accesses
0.065% or more of Consolidated
Volume during the month
\$0.0030 per share executed for all
other member organizations

...

(b) No change.

(c) Qualified Market Maker ("QMM") Program

(1) A member may be designated as a QMM if the member organization (i) quotes at the NBBO at least 10% of the time during Market Hours in an average of at least 750 securities per day during a month. For purposes of this rule, a member organization is considered to be quoting at the NBBO if one of its MPIDs has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, the Exchange will determine the number of securities in which each of a member organization's MPIDs satisfied the 10% NBBO requirement. The Exchange will aggregate all of a member organization's MPIDs to determine the number of securities for purposes of the 10% NBBO requirement. To qualify for QMM designation, the member organization must meet the requirement for an average of 750 securities per day over the course of the month.

(2) The Exchange will provide a credit of \$0.0002 per share executed with respect to all displayed orders of a QMM in securities in Tape A priced at \$1 or more per share that provide liquidity. Such credit will be in addition to any credit provided under Equity 7, Section 3.

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