

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="33"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2019"/> - * <input type="text" value="38"/>	Amendment No. (req. for Amendments *) <input type="text"/>
---	--	--	--

Filing by
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"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

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

Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
--	--

Description

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

Proposal to amend its Second Amended Limited Liability Company Agreement and By-Laws

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 * Last Name *
Title *
E-mail *
Telephone * 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

By

(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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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 *

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, 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

Add Remove View

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

Add Remove View

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 its Second Amended Limited Liability Company Agreement (“LLC Agreement”) and By-Laws (“By-Laws”), as further discussed 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 the Board of Directors of the Exchange (the “Board”) on November 7, 2018. No other action is necessary for the filing of the rule change.

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

Sun Kim
Associate General Counsel
Nasdaq, Inc.
212-231-5106

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 Exchange proposes to amend its LLC Agreement and By-Laws to (i) harmonize certain provisions related to the regulatory independence of the Exchange with those of the Exchange's affiliates, Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), and Nasdaq MRX, LLC ("MRX"), (ii) modify Director categorizations, (iii) update compositional requirements of the Regulatory Oversight Committee ("ROC"), and (iv) make additional, non-substantive edits. Each change is discussed below.

LLC Agreement

The Exchange proposes to modify a number of provisions in its LLC Agreement related to the regulatory independence of the Exchange. As discussed below, the Exchange believes that the proposed changes will make these provisions more robust and will serve to align the Exchange's LLC Agreement with the LLC Agreements of its affiliates, ISE, GEMX, and MRX.

- Distributions: The Exchange currently has distribution provisions in Section 14 of the LLC Agreement that prohibits the Exchange from making distributions to its stockholder (i.e., Nasdaq, Inc.), using Regulatory Funds.³ The Exchange now proposes to amend this provision to substantively conform to Section 15 in the ISE, GEMX, and MRX LLC Agreements by specifying that Regulatory Funds shall not be used for non-regulatory purposes, but rather shall be used to fund the legal, regulatory and surveillance operations of the Exchange. The Exchange believes these are minor changes that make the distribution provisions more robust by specifying how Regulatory Funds may be used. Lastly, the Exchange

³ "Regulatory Funds" means fees, fines, or penalties derived from the regulatory operations of the Exchange. "Regulatory Funds" shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Exchange, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Exchange. See By-Law Article I, Section (ii). The definition of Regulatory Funds is not changing under this proposal.

proposes to add that it would not be required to make a distribution to the stockholder if such distribution would otherwise be required to fulfill the regulatory functions or responsibilities of the Exchange.

- Books and Records: Section 15 of the LLC Agreement presently sets forth certain information relating to general administrative matters with respect to the books and records of the Exchange, including requirements as to where the Exchange's books and records are kept, the maintenance of such books and records, and inspection rights, among other provisions. The Exchange proposes to amend Section 15 to add substantively conforming language as set forth in Section 16 of the LLC Agreements of ISE, GEMX, and MRX by providing that all confidential information relating to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange shall: (i) not be made available to any persons other than to those officers, directors, employees and agents of the Exchange that have a reasonable need to know the contents thereof, (ii) be retained in confidence by the Exchange and the officers, directors, employees and agents of the Exchange, and (iii) must not be used for any non-regulatory purpose. Furthermore, the Exchange proposes to add, similar to the ISE, GEMX, and MRX LLC Agreements, that nothing in the LLC Agreement shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Exchange to disclose such confidential information to the Commission. The Exchange believes that the proposed changes will add more specificity as to who may access the Exchange's books and records, especially relating to confidential information on the self-regulatory function of the Exchange, and the use of such information.
- Assignments: Section 20 of the LLC Agreement currently prohibits the Exchange's stockholder from transferring or assigning in whole or in part its limited liability company interest in the Exchange, except to an affiliate of the stockholder. The Exchange now proposes to provide in Section 20 that any transfer or assignment by the stockholder of its equity ownership interest in the Exchange is prohibited unless it is filed and approved by the Commission pursuant to a rule filing, and to delete the stockholder affiliate exception to the general prohibition on transfers and assignments. This will align Section 20 of the Exchange's LLC Agreement with Section 20 in the LLC Agreements of ISE, GEMX, and MRX.

By-Law Article I

Currently, the definition of "Non-Industry Director" in the Exchange By-Laws refers to, among other individuals, an officer, director or employee of an issuer of

securities listed on the national securities exchange operated by the Exchange.⁴ Because only its affiliate, The Nasdaq Stock Market LLC (“Nasdaq”), currently operates an equities listing market, the Exchange seeks to amend the definition of Non-Industry Director to refer to an officer, director or employee of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates. The Exchange believes that the proposed changes will bring greater clarity to the Exchange’s rules by aligning the By-Law provision to how the Exchange currently operates. The Exchange notes that the qualifications for a Non-Industry Director are not expanding under this proposal and as a practical matter, no changes to the current composition of Non-Industry Directors on the Exchange’s Board are contemplated by this rule change. Today, a Non-Industry Director who is not designated by the Exchange as a Public Director⁵ under (i) of the definition of Non-Industry Director, and that does not explicitly fall under (ii) (i.e., “an officer, director or employee of an issuer of securities listed on the national securities exchange operated by the Exchange”) would still fall under (iii) an individual who would not be an Industry Director.⁶ With the proposed changes, these

⁴ In addition, the term “Non-Industry Director” encompasses a Director (excluding Staff Directors) who is a Public Director or any other individual who would not be an Industry Director. See By-Law Article I, Section (bb).

⁵ The term "Public Director" shall mean a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. See By-Law Article I, Section (gg).

⁶ The term "Industry Director" means a Director (excluding any two officers of the Exchange, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent

Non-Industry Directors could fall under both (ii) and (iii) because they would be representative of issuers listed on the Exchange's affiliate, Nasdaq, and at the same time, not be considered Industry Directors. The Exchange also proposes to make conforming changes to the definition of a "Non-Industry member" of a committee.⁷ The Exchange further proposes a non-substantive change to delete the reference to "director" contained in (ii) of the definition of Non-Industry member in order to align with its affiliated exchanges.⁸

of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. See By-Law Article I, Section (p).

⁷ See By-Law Article I, Section (cc).

⁸ In particular, the definitions of Non-Industry member on Nasdaq BX, Inc. ("BX"), Nasdaq, ISE, GEMX, and MRX all refer to, among other individuals, "...an officer or employee of an issuer of securities..." See BX By-Law Article I, Section (cc); Nasdaq By-Law Article I, Section (w); ISE By-Law Article I, Section (x); GEMX By-Law Article I, Section (x); and MRX By-Law Article I, Section (x).

Currently, the Exchange’s Board compositional requirements require at least one Public Director and at least one Director representative of issuers and investors.⁹ As set forth in Article I, Section (gg), a “Public Director” is defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. “Director representative of issuers and investors” is not defined specifically in the Exchange’s By-Laws, but is implicitly defined in the term Non-Industry Director as “an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Exchange.”¹⁰ The Exchange now proposes to clarify in the definition of Public Director that, for the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates shall not be precluded from being considered a Public Director solely on the basis of such directorship. The Exchange believes that a director of a listed company can adequately represent the interests of listed companies on the Board and therefore be considered an issuer representative. At the same time, the Exchange does not believe that such a directorship always constitutes a material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA, which would prohibit the individual from being considered a Public Director.¹¹ Of course, such issuer representative must

⁹ See By-Law Article III, Section 3-2(a).

¹⁰ See By-Law Article I, Section (bb). As discussed above, the Exchange will amend this provision to refer to “an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates.”

¹¹ This is consistent with the longstanding best practice of the Exchange’s parent, Nasdaq, Inc., having the Chairman of the Audit Committee of the board of directors of Nasdaq, Inc. serve as the Chairman of the Exchange Board’s Regulatory Oversight Committee, which is required to be comprised of Public Directors who are also considered “independent directors” as defined in Nasdaq

still meet the requirements of a Public Director and not have such material business relationships by definition. Thus in limited circumstances, the Exchange believes that it is possible for directors of listed companies to be considered both Public Directors and issuer representatives.

The Exchange does not seek to amend the Board's qualification requirements in the By-Laws other than the proposed changes to the definitions of Non-Industry Director and Public Director. With the proposed changes, the composition of the Board would still be required to reflect a balance among Non-Industry Directors (including Public Directors and Directors representative of issuers and investors), Industry Directors, and Member Representative Directors.¹² Accordingly, current Board qualification requirements such as the number of Non-Industry Directors, including at least one Public Director and at least one Director representative of issuers and investors, equaling or exceeding the sum of the number of Industry Directors and Member Representative Directors would continue to apply.¹³

Rule 5605. See By-Law Article V, Section 5-2(c). Because Nasdaq, Inc. is a listed company, this Exchange Director could be considered both an issuer representative and a Public Director.

¹² The term "Member Representative Director" shall mean a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by a Member pursuant to the Exchange's By-Laws. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of a Member. See By-Law Article I, Section (w). Member Representative Directors are directors that meet the fair representation requirement in Section 6(b)(3) of the Act, which requires that the "rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs..."

¹³ See By-Law Article III, Section 3-2(a). In addition, the Board qualification requirement that at least 20% of the Directors be Member Representative Directors will continue to apply. See LLC Agreement Section 8(a).

In light of the foregoing, the Exchange also proposes to make conforming changes to the definition of a “Public member” of a committee.¹⁴ Lastly, the Exchange proposes to add that a Public member means a committee member that has no material business relationship with FINRA (in addition to a broker or dealer, or the Exchange and its affiliates, as currently provided). This proposed change would align the Exchange’s definition of “Public member” to its affiliated exchanges.¹⁵

By-Law Article V, Section 5-2(c)

Currently, By-Law Article V, Section 5-2(c) requires that the ROC be comprised of three members, each of whom shall be a Public Director and an “independent director” as defined in Nasdaq Rule 4200. The Exchange proposes to amend Section 5(c) to provide that the ROC shall be comprised of at least three members, as is currently set forth in the ROC Charter.¹⁶ All members of the ROC will continue to be Public Directors and “independent directors.” Lastly, the Exchange also proposes to make technical changes in Section 5-2(c) to update the reference to Nasdaq Rule 4200 to Rule 5605.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(1), Section 6(b)(3), and

¹⁴ See By-Law Article I, Section (hh).

¹⁵ See BX By-Law Article I, Section (hh); Nasdaq By-Law Article I, Section (z); ISE By-Law Article I, Section (aa); GEMX By-Law Article I, Section (aa); and MRX By-Law Article I, Section (aa).

¹⁶ The ROC Charter is available at: <http://ir.nasdaq.com/static-files/ad0a0102-e977-40cf-8139-15c359576a25>.

¹⁷ 15 U.S.C. 78f(b).

Section 6(b)(5) of the Act,¹⁸ in particular, which require, among other things, an exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act; that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

LLC Agreement

The Exchange believes that the proposed changes to the LLC Agreement provisions on distributions, books and records, and assignments are consistent with the Act. As discussed above, the Exchange believes that its proposal will bring greater specificity and detail to provisions related to the regulatory independence of the Exchange. The Exchange believes that the proposed changes will make clear the independence of the Exchange's regulatory function and facilitate the ability of the Exchange to carry out its responsibility and operate in a manner consistent with the Act. Furthermore, the proposed amendments will have the additional benefit of bringing the Exchange's LLC Agreement into greater conformity with those of ISE, GEMX, and MRX, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.¹⁹

¹⁸ 15 U.S.C. 78f(b)(1), (b)(3), and (b)(5).

¹⁹ See ISE, GEMX, and MRX LLC Agreements, Sections 15, 16, and 20.

By-Law Article I

The Exchange believes that the changes to the definitions of Non-Industry Director and Non-Industry member proposed above will enhance the clarity of these provisions given that only the Exchange's affiliate (Nasdaq) currently operates an equities listing market. Accordingly, the proposed changes should more accurately reflect how the Exchange currently operates. The Exchange also believes that the proposed changes to the definitions of Public Director and Public member are consistent with the Act as these modifications are intended to make clear that a Director is not barred from being considered a Public Director merely because the Director serves as a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates, and are consistent with current corporate governance practices.²⁰ Furthermore, as discussed above, the requirements that the number of Non-Industry Directors (including at least one Public Director and at least one Director representative of issuers and investors) equal or exceed the sum of the number of Industry Directors and Member Representative Directors, and at least 20% of the Directors be Member Representative Directors, would continue to apply.²¹ Accordingly, the Exchange believes that the proposed changes will more accurately reflect the Exchange's current operations and governance practices while continuing to comport with the Exchange's statutory obligations regarding fair representation under Section 6(b)(3) of the Act. Lastly, the proposed changes in "Non-Industry member" and "Public member" as discussed above will bring these definitions in greater conformity with the Exchange's

²⁰ See supra note 11.

²¹ See supra notes 12 and 13, with accompanying text.

affiliated exchanges, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.

By-Law Article V, Section 5-2(c)

The Exchange believes that the proposed rule change in By-Law Article V, Section 5-2(c) to provide that the ROC shall be comprised of at least three members is consistent with the Act because it will promote transparency to the Exchange's current practices by conforming the By-Law language to the ROC Charter. As discussed above, the composition requirements that all ROC members be Public Directors and "independent directors" as defined in Nasdaq's Rules will remain unchanged with this proposal, thereby ensuring that an independent Board committee will continue to be responsible for the regulatory oversight of the Exchange. Lastly, the proposed technical change to update the reference to Nasdaq Rule 4200 to Rule 5605 will bring greater clarity to the Exchange's rules, which will protect investors and the public interest.

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

Because the proposed rule change relates to the corporate governance of the Exchange and not to the Exchange's operations, 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.

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)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)²² of the Act and Rule 19b-4(f)(6) thereunder²³ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposed changes to its LLC Agreement and By-Laws to harmonize certain provisions related to the regulatory independence of the Exchange with those of its affiliates, amend Director categorizations, and update the ROC's compositional requirements would not significantly affect the protection of investors and the public interest. As discussed above, the proposed changes are intended to conform to similar standards of its affiliates,²⁴ reflect current Exchange governance practices, and bring greater clarity to the Exchange's rules. Furthermore, the composition of the Board will continue to be required to reflect a balance among Non-Industry Directors (including Public Directors and Directors representative of issuers and investors), Industry Directors, and Member Representative Directors, and therefore continue to comport with the Exchange's statutory obligations regarding fair representation under Section 6(b)(3) of the Act. In addition, the Exchange does not

²² 15 U.S.C. 78s(b)(3)(A)(iii).

²³ 17 CFR 240.19b-4(f)(6).

²⁴ See supra notes 8, 15, and 19.

believe that this proposal imposes any significant burden on competition because the proposed amendments do not address competitive issues but is concerned solely with the administration and governance of the Exchange, as discussed above.

Furthermore, Rule 19b-4(f)(6)(iii)²⁵ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange respectfully requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that the Exchange may amend its LLC Agreement and By-Laws as soon as possible. The Exchange Board meeting will take place on September 25, 2019 to address certain housekeeping items, which has historically included various Board committee appointments, including the ROC. Waiver of the operative delay is consistent with the

²⁵ 17 CFR 240.19b-4(f)(6)(iii).

protection of investors and the public interest because it will allow the Exchange to conform to similar standards of its affiliates, reflect current Exchange governance practices, and bring greater clarity to the Exchange's rules, each as discussed above, in a timely manner, thereby creating more consistent and clear standards for the administration and governance across the Nasdaq, Inc.-owned affiliated exchanges.

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

The proposed amendments to the LLC Agreement are based on Sections 15, 16, and 20 of the ISE, GEMX, and MRX LLC Agreements. The proposed By-Law amendments to the definitions of Non-Industry member and Public member are based on BX By-Law Article I, Sections (cc) and (hh); Nasdaq By-Law Article I, Sections (w) and (z); ISE By-Law Article I, Sections (x) and (aa); GEMX By-Law Article I, Sections (x) and (aa); and MRX By-Law Article I, Sections (x) and (aa).

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-2019-38)

September __, 2019

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Second Amended Limited Liability Company Agreement and By-Laws

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 September 20, 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 its Second Amended Limited Liability Company Agreement (“LLC Agreement”) and By-Laws (“By-Laws”), as further discussed 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 Exchange proposes to amend its LLC Agreement and By-Laws to (i) harmonize certain provisions related to the regulatory independence of the Exchange with those of the Exchange's affiliates, Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), and Nasdaq MRX, LLC ("MRX"), (ii) modify Director categorizations, (iii) update compositional requirements of the Regulatory Oversight Committee ("ROC"), and (iv) make additional, non-substantive edits. Each change is discussed below.

LLC Agreement

The Exchange proposes to modify a number of provisions in its LLC Agreement related to the regulatory independence of the Exchange. As discussed below, the Exchange believes that the proposed changes will make these provisions more robust and will serve to align the Exchange's LLC Agreement with the LLC Agreements of its affiliates, ISE, GEMX, and MRX.

- Distributions: The Exchange currently has distribution provisions in Section 14 of the LLC Agreement that prohibits the Exchange from making distributions to

its stockholder (i.e., Nasdaq, Inc.), using Regulatory Funds.³ The Exchange now proposes to amend this provision to substantively conform to Section 15 in the ISE, GEMX, and MRX LLC Agreements by specifying that Regulatory Funds shall not be used for non-regulatory purposes, but rather shall be used to fund the legal, regulatory and surveillance operations of the Exchange. The Exchange believes these are minor changes that make the distribution provisions more robust by specifying how Regulatory Funds may be used. Lastly, the Exchange proposes to add that it would not be required to make a distribution to the stockholder if such distribution would otherwise be required to fulfill the regulatory functions or responsibilities of the Exchange.

- Books and Records: Section 15 of the LLC Agreement presently sets forth certain information relating to general administrative matters with respect to the books and records of the Exchange, including requirements as to where the Exchange's books and records are kept, the maintenance of such books and records, and inspection rights, among other provisions. The Exchange proposes to amend Section 15 to add substantively conforming language as set forth in Section 16 of the LLC Agreements of ISE, GEMX, and MRX by providing that all confidential information relating to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange shall: (i) not be made available to any persons other than to those officers, directors, employees and agents of the Exchange that have a reasonable need to know the contents thereof, (ii) be retained in confidence by the Exchange and the officers, directors, employees and agents of the Exchange, and (iii) must not be used for any non-regulatory purpose. Furthermore, the Exchange proposes to add, similar to the ISE, GEMX, and MRX LLC Agreements, that nothing in the LLC Agreement shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Exchange to disclose such confidential information to the Commission. The Exchange believes that the proposed changes will add more specificity as to who may access the Exchange's books and records, especially relating to confidential information on the self-regulatory function of the Exchange, and the use of such information.

³ "Regulatory Funds" means fees, fines, or penalties derived from the regulatory operations of the Exchange. "Regulatory Funds" shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Exchange, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Exchange. See By-Law Article I, Section (ii). The definition of Regulatory Funds is not changing under this proposal.

- Assignments: Section 20 of the LLC Agreement currently prohibits the Exchange's stockholder from transferring or assigning in whole or in part its limited liability company interest in the Exchange, except to an affiliate of the stockholder. The Exchange now proposes to provide in Section 20 that any transfer or assignment by the stockholder of its equity ownership interest in the Exchange is prohibited unless it is filed and approved by the Commission pursuant to a rule filing, and to delete the stockholder affiliate exception to the general prohibition on transfers and assignments. This will align Section 20 of the Exchange's LLC Agreement with Section 20 in the LLC Agreements of ISE, GEMX, and MRX.

By-Law Article I

Currently, the definition of "Non-Industry Director" in the Exchange By-Laws refers to, among other individuals, an officer, director or employee of an issuer of securities listed on the national securities exchange operated by the Exchange.⁴ Because only its affiliate, The Nasdaq Stock Market LLC ("Nasdaq"), currently operates an equities listing market, the Exchange seeks to amend the definition of Non-Industry Director to refer to an officer, director or employee of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates. The Exchange believes that the proposed changes will bring greater clarity to the Exchange's rules by aligning the By-Law provision to how the Exchange currently operates. The Exchange notes that the qualifications for a Non-Industry Director are not expanding under this proposal and as a practical matter, no changes to the current composition of Non-Industry Directors on the Exchange's Board are contemplated by this rule change. Today, a Non-Industry Director who is not designated by the Exchange as a Public

⁴ In addition, the term "Non-Industry Director" encompasses a Director (excluding Staff Directors) who is a Public Director or any other individual who would not be an Industry Director. See By-Law Article I, Section (bb).

Director⁵ under (i) of the definition of Non-Industry Director, and that does not explicitly fall under (ii) (i.e., “an officer, director or employee of an issuer of securities listed on the national securities exchange operated by the Exchange”) would still fall under (iii) an individual who would not be an Industry Director.⁶ With the proposed changes, these Non-Industry Directors could fall under both (ii) and (iii) because they would be representative of issuers listed on the Exchange’s affiliate, Nasdaq, and at the same time, not be considered Industry Directors. The Exchange also proposes to make conforming

⁵ The term "Public Director" shall mean a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. See By-Law Article I, Section (gg).

⁶ The term "Industry Director" means a Director (excluding any two officers of the Exchange, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. See By-Law Article I, Section (p).

changes to the definition of a “Non-Industry member” of a committee.⁷ The Exchange further proposes a non-substantive change to delete the reference to “director” contained in (ii) of the definition of Non-Industry member in order to align with its affiliated exchanges.⁸

Currently, the Exchange’s Board compositional requirements require at least one Public Director and at least one Director representative of issuers and investors.⁹ As set forth in Article I, Section (gg), a “Public Director” is defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. “Director representative of issuers and investors” is not defined specifically in the Exchange’s By-Laws, but is implicitly defined in the term Non-Industry Director as “an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Exchange.”¹⁰ The Exchange now proposes to clarify in the definition of Public Director that, for the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates shall not be precluded from being considered a Public Director solely on the

⁷ See By-Law Article I, Section (cc).

⁸ In particular, the definitions of Non-Industry member on Nasdaq BX, Inc. (“BX”), Nasdaq, ISE, GEMX, and MRX all refer to, among other individuals, “...an officer or employee of an issuer of securities...” See BX By-Law Article I, Section (cc); Nasdaq By-Law Article I, Section (w); ISE By-Law Article I, Section (x); GEMX By-Law Article I, Section (x); and MRX By-Law Article I, Section (x).

⁹ See By-Law Article III, Section 3-2(a).

¹⁰ See By-Law Article I, Section (bb). As discussed above, the Exchange will amend this provision to refer to “an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates.”

basis of such directorship. The Exchange believes that a director of a listed company can adequately represent the interests of listed companies on the Board and therefore be considered an issuer representative. At the same time, the Exchange does not believe that such a directorship always constitutes a material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA, which would prohibit the individual from being considered a Public Director.¹¹ Of course, such issuer representative must still meet the requirements of a Public Director and not have such material business relationships by definition. Thus in limited circumstances, the Exchange believes that it is possible for directors of listed companies to be considered both Public Directors and issuer representatives.

The Exchange does not seek to amend the Board's qualification requirements in the By-Laws other than the proposed changes to the definitions of Non-Industry Director and Public Director. With the proposed changes, the composition of the Board would still be required to reflect a balance among Non-Industry Directors (including Public Directors and Directors representative of issuers and investors), Industry Directors, and Member Representative Directors.¹² Accordingly, current Board qualification

¹¹ This is consistent with the longstanding best practice of the Exchange's parent, Nasdaq, Inc., having the Chairman of the Audit Committee of the board of directors of Nasdaq, Inc. serve as the Chairman of the Exchange Board's Regulatory Oversight Committee, which is required to be comprised of Public Directors who are also considered "independent directors" as defined in Nasdaq Rule 5605. See By-Law Article V, Section 5-2(c). Because Nasdaq, Inc. is a listed company, this Exchange Director could be considered both an issuer representative and a Public Director.

¹² The term "Member Representative Director" shall mean a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by a Member pursuant to the Exchange's By-Laws. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of a Member. See By-Law Article I, Section (w). Member

requirements such as the number of Non-Industry Directors, including at least one Public Director and at least one Director representative of issuers and investors, equaling or exceeding the sum of the number of Industry Directors and Member Representative Directors would continue to apply.¹³

In light of the foregoing, the Exchange also proposes to make conforming changes to the definition of a “Public member” of a committee.¹⁴ Lastly, the Exchange proposes to add that a Public member means a committee member that has no material business relationship with FINRA (in addition to a broker or dealer, or the Exchange and its affiliates, as currently provided). This proposed change would align the Exchange’s definition of “Public member” to its affiliated exchanges.¹⁵

By-Law Article V, Section 5-2(c)

Currently, By-Law Article V, Section 5-2(c) requires that the ROC be comprised of three members, each of whom shall be a Public Director and an “independent director” as defined in Nasdaq Rule 4200. The Exchange proposes to amend Section 5(c) to provide that the ROC shall be comprised of at least three members, as is currently set

Representative Directors are directors that meet the fair representation requirement in Section 6(b)(3) of the Act, which requires that the “rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs...”

¹³ See By-Law Article III, Section 3-2(a). In addition, the Board qualification requirement that at least 20% of the Directors be Member Representative Directors will continue to apply. See LLC Agreement Section 8(a).

¹⁴ See By-Law Article I, Section (hh).

¹⁵ See BX By-Law Article I, Section (hh); Nasdaq By-Law Article I, Section (z); ISE By-Law Article I, Section (aa); GEMX By-Law Article I, Section (aa); and MRX By-Law Article I, Section (aa).

forth in the ROC Charter.¹⁶ All members of the ROC will continue to be Public Directors and “independent directors.” Lastly, the Exchange also proposes to make technical changes in Section 5-2(c) to update the reference to Nasdaq Rule 4200 to Rule 5605.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(1), Section 6(b)(3), and Section 6(b)(5) of the Act,¹⁸ in particular, which require, among other things, an exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act; that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

LLC Agreement

The Exchange believes that the proposed changes to the LLC Agreement provisions on distributions, books and records, and assignments are consistent with the Act. As discussed above, the Exchange believes that its proposal will bring greater specificity and detail to provisions related to the regulatory independence of the Exchange. The Exchange believes that the proposed changes will make clear the

¹⁶ The ROC Charter is available at: <http://ir.nasdaq.com/static-files/ad0a0102-e977-40cf-8139-15c359576a25>.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(1), (b)(3), and (b)(5).

independence of the Exchange's regulatory function and facilitate the ability of the Exchange to carry out its responsibility and operate in a manner consistent with the Act. Furthermore, the proposed amendments will have the additional benefit of bringing the Exchange's LLC Agreement into greater conformity with those of ISE, GEMX, and MRX, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.¹⁹

By-Law Article I

The Exchange believes that the changes to the definitions of Non-Industry Director and Non-Industry member proposed above will enhance the clarity of these provisions given that only the Exchange's affiliate (Nasdaq) currently operates an equities listing market. Accordingly, the proposed changes should more accurately reflect how the Exchange currently operates. The Exchange also believes that the proposed changes to the definitions of Public Director and Public member are consistent with the Act as these modifications are intended to make clear that a Director is not barred from being considered a Public Director merely because the Director serves as a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates, and are consistent with current corporate governance practices.²⁰ Furthermore, as discussed above, the requirements that the number of Non-Industry Directors (including at least one Public Director and at least one Director representative of issuers and investors) equal or exceed the sum of the number of Industry Directors and Member Representative Directors, and at least 20% of the Directors be

¹⁹ See ISE, GEMX, and MRX LLC Agreements, Sections 15, 16, and 20.

²⁰ See supra note 11.

Member Representative Directors, would continue to apply.²¹ Accordingly, the Exchange believes that the proposed changes will more accurately reflect the Exchange's current operations and governance practices while continuing to comport with the Exchange's statutory obligations regarding fair representation under Section 6(b)(3) of the Act. Lastly, the proposed changes in "Non-Industry member" and "Public member" as discussed above will bring these definitions in greater conformity with the Exchange's affiliated exchanges, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.

By-Law Article V, Section 5-2(c)

The Exchange believes that the proposed rule change in By-Law Article V, Section 5-2(c) to provide that the ROC shall be comprised of at least three members is consistent with the Act because it will promote transparency to the Exchange's current practices by conforming the By-Law language to the ROC Charter. As discussed above, the composition requirements that all ROC members be Public Directors and "independent directors" as defined in Nasdaq's Rules will remain unchanged with this proposal, thereby ensuring that an independent Board committee will continue to be responsible for the regulatory oversight of the Exchange. Lastly, the proposed technical change to update the reference to Nasdaq Rule 4200 to Rule 5605 will bring greater clarity to the Exchange's rules, which will protect investors and the public interest.

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

Because the proposed rule change relates to the corporate governance of the Exchange and not to the Exchange's operations, the Exchange does not believe that the

²¹ See supra notes 12 and 13, with accompanying text.

proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

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

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or 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.

²² 15 U.S.C. 78s(b)(3)(A)(iii).

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

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-2019-38 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-2019-38. 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-2019-38 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Eduardo A. Aleman
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

**SECOND AMENDED LIMITED LIABILITY COMPANY AGREEMENT OF
NASDAQ PHLX LLC**

* * * * *

Section 14. Distributions.

Distributions shall be made to the Stockholder at the times and in the aggregate amounts determined by the Board. Notwithstanding any provision to the contrary contained in this Agreement, (i) the Exchange shall not be required to make a distribution to the Stockholder on account of its interest in the Exchange if such distribution would violate the LLC Act or any other applicable law or is otherwise required to fulfill the regulatory functions or responsibilities of the Exchange, and (ii) Regulatory Funds shall not be used for non-regulatory purposes, but rather shall be used to fund the legal, regulatory and surveillance operations of the Exchange and the Exchange shall not make a distribution to the Stockholder using Regulatory Funds (as defined in the By-Laws).

Section 15. Books and Records.

The Board shall keep or cause to be kept complete and accurate books of account and records with respect to the Exchange's business within the United States. The books of the Exchange shall at all times be maintained by the Board. The Stockholder and its duly authorized representatives shall have the right to examine the Exchange books, records and documents during normal business hours. The Exchange, and the Board on behalf of the Exchange, shall not have the right to keep confidential from the Stockholder any information that the Board would otherwise be permitted to keep confidential from the Stockholder pursuant to Section 18-305(c) of the LLC Act. The Exchange's books of account shall be kept using the method of accounting determined by the Stockholder. The Exchange's independent auditor shall be an independent public accounting firm selected by the Board.

Other than as provided in this Section 15 with respect to the Securities and Exchange Commission, all confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange shall: (i) not be made available to any persons other than to those officers, directors, employees and agents of the Exchange that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Exchange and the officers, directors, employees and agents of the Exchange; and (iii) not be used for any non-regulatory purposes. Nothing in this LLC Agreement shall be interpreted as to limit or impede the rights of the Securities and Exchange Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and

regulations thereunder, or to limit and impede the ability of any officers, directors, employees or agents of the Exchange to disclose such confidential information to the Securities and Exchange Commission.

* * * * *

Section 20. Assignments.

The Stockholder may not transfer or assign in whole or in part its limited liability company interest in the Exchange, unless such transfer or assignment is filed with and approved by the Securities and Exchange Commission pursuant to the rule filing procedure under Section 19 of the Exchange Act[except to an Affiliate of such Stockholder].

* * * * *

BY-LAWS OF NASDAQ PHLX LLC

* * * * *

ARTICLE I DEFINITIONS

* * * * *

(bb) Non-Industry Director

The term "Non-Industry Director" shall mean a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer, director, or employee of an issuer of securities listed on [the]a national securities exchange operated by the Exchange or one of its affiliates; or (iii) any other individual who would not be an Industry Director.

(cc) Non-Industry Member

The term "Non-Industry member" means a member of any committee appointed by the Board of Directors who is (i) a Public member; (ii) an officer[, director,] or employee of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates; or (iii) any other individual who would not be an Industry member.

* * * * *

(gg) Public Director

The term "Public Director" shall mean a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. For the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates shall not be precluded from being considered a "Public Director" solely on the basis of such directorship.

(hh) Public Member

The term "public member" means a member of any committee appointed by the Board of Directors who has no material business relationship with a broker or dealer, the Exchange[,] or its affiliates, or FINRA. For the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates shall not be precluded from being considered a "public member" solely on the basis of such directorship.

* * * * *

ARTICLE V STANDING COMMITTEES

* * * * *

Sec. 5-2. Committees Composed Solely of Directors

(a) – (b) No change.

(c) The Board shall appoint a Regulatory Oversight Committee. The Committee shall oversee the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities; assess the Exchange's regulatory performance; and assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of Exchange's regulatory functions. In furtherance of its functions, the Regulatory Oversight Committee shall (A) review the Exchange's regulatory budget and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (B) meet regularly with the Chief Regulatory Officer in executive session; and (C) be informed about the compensation and promotion or termination of the Chief Regulatory Officer and the reasons therefor. The Regulatory Oversight Committee shall consist of at least three members, each of whom shall be a Public Director and an "independent director" as defined in Rule [4200]5605 of the Rules of The Nasdaq Stock Market.

* * * * *