

Required fields are shown with yellow backgrounds and asterisks.

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

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<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	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

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

Description

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

Proposal to enhance the End of Day summary message on Nasdaq Last Sale Plus

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 *
Daniel	Cantu
Title *	
Senior Associate General Counsel	
E-mail *	
daniel.cantu@nasdaq.com	
Telephone *	Fax
(301) 978-8469	


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	03/19/2021	EVP and Chief Legal Officer
By	John Zecca	
	(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 *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Nasdaq PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to enhance the End of Day (“EOD”) summary message on Nasdaq Last Sale (“NLS”) Plus by replacing the current high, low and closing price of a security based on its trading on Phlx, The Nasdaq Stock Market, LLC (“Nasdaq”), and Nasdaq BX, Inc. (“BX” or “Nasdaq BX”) with the high, low and closing price of a security published by the securities information processors (“SIPs”), and adding the opening price of a security as published by the SIPs to that message. This is a companion filing that will modify the definition of NLS Plus contained in the Nasdaq Phlx Rulebook to conform to the definitions provided in the Nasdaq and Nasdaq BX rulebooks.

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 November 5,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

2020. 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:

Daniel A. Cantu
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8469

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

a. Purpose

The Exchange proposes to enhance the EOD summary message on NLS Plus by replacing the current high, low and closing price of a security based on its trading on the Phlx, Nasdaq, and Nasdaq BX exchanges with the consolidated high, low and closing price as published by the SIPs, and adding the opening price of a security published by the SIPs to that message.³ The proposed changes to NLS Plus were filed by Nasdaq on February 17, 2021, and published in the Federal Register on March 8, 2021.⁴ Nasdaq BX will be submitting a similar filing concurrently with this filing. The purpose of this filing is to modify the definition of NLS Plus in the Nasdaq Phlx Rulebook to conform to the definitions provided in the Nasdaq and Nasdaq BX rulebooks.

Nasdaq's proposal to enhance the EOD summary message on NLS Plus was in response to requests by firms using NLS Plus for a broader benchmark against which to compare trades on the Nasdaq exchanges. Specifically, approximately 30 firms have

³ The securities information processors issue consolidated trade information pursuant to the UTP Plan and the CTA/CQ Plan.

⁴ See Securities Exchange Act Release No. 91241 (March 2, 2021), 86 FR 13427 (March 8, 2021) (SR-Nasdaq-2021-010).

requested that Nasdaq distribute benchmark prices on NLS Plus to provide retail investors and the general investing public with a static benchmark against which to compare the price movements shown on NLS Plus using standard high, low, opening and closing prices for U.S. markets as a whole. In response to that feedback, and also partly in response to recent changes by competitor exchanges to their end of day messages,⁵ the Exchange proposes to enhance its EOD message for NLS Plus—which currently provides the high, low and closing price of a security based on its trading on Nasdaq affiliates—with a new EOD message that provides the high, low and closing price published by the SIPs, and add a new field with the opening price of a security as published by the SIPs.⁶

The Exchange proposes that this change become operative on May 17, 2021, to allow time to conduct customer testing in advance of the date of launch.

⁵ See Securities Exchange Act Release No. 89083 (June 17, 2020), 85 FR 37706 (June 23, 2020) (SR-CboeEDGX-2020-029) (amending the content of the Cboe One Feed to identify the primary listing market’s official opening and closing price); NYSE Best Quote and Trades Client Specification (March 30, 2020) (updated on January 31, 2020, to publish the listing market official opening and closing price in the Consolidated Stock Summary Messages) available at https://www.nyse.com/publicdocs/nyse/data/NYSE_BQT_Client_Specification_v2.3a.pdf.

⁶ The Proposal also clarifies the description of the information provided in NLS Plus. It removes an unnecessary sentence at the end of the description of NLS Plus stating that volume information reflects trading activity in Tape A and B Securities, and replaces it with an earlier reference to Tape A and B securities that provides the same information. It also separates the description of the end of day trade summary into two sentences for greater clarity: the first sentence lists the data provided by the Nasdaq equity exchanges, and the second sentence identifies the consolidated information obtained from Tapes A, B and C. The phrases “as well as consolidated volume of,” and “Cumulative Consolidated Market Volume” are deleted to remove repetitive language that might cause confusion. This filing also replaces an outdated reference to Nasdaq Rule 7032 in Section 3, Nasdaq PSX Fees, PSX Last Sale and Nasdaq Last Sale Plus Data Feeds (b)(4) with the correct citation to Equity 7, Section 132 of the Nasdaq Rulebook. See Securities Exchange Act Release No. 84684 (November 29, 2018), 83 FR 62936 (December 6, 2018) (SR-NASDAQ-2018-098).

Nasdaq Last Sale Plus

NLS Plus is a comprehensive data feed that offers retail investors, the general investing public, and other customers access to the last sale products offered by Phlx,⁷ Nasdaq, and Nasdaq BX, and the consolidated volume information published on the SIPs for Tapes A, B, and C, in a convenient format that includes both real-time and end of day information.⁸ It is, in essence, a market data vendor product that consolidates information from multiple Nasdaq exchanges and the SIPs. This product directly competes against similar products offered by other exchanges, and faces potential competition from data vendors, which can obtain and distribute SIP data on the same terms as Nasdaq.⁹

⁷ PSX Last Sale is comprised of two proprietary data feeds containing real-time last sale information for trades executed on the Exchange. “PSX Last Sale for Nasdaq” contains all such transaction reports for Nasdaq-listed stocks, and “PSX Last Sale for NYSE/NYSE Amex” contains all such transaction reports for NYSE-listed stocks and stocks listed on NYSE American and other Tape B listing venues. See Equity 7, Section 3, PSX Last Sale and Nasdaq Last Sale Plus Data feeds (a).

⁸ The full list of NLS Plus components is as follows: Trade Price, Trade Size, Sale Condition Modifiers, Cumulative Consolidated Market Volume for Tape A, B, and C securities, End of Day Trade Summary, Adjusted Closing Price, IPO Information, Bloomberg ID, and pertinent regulatory Information (such as Market Wide Circuit Breaker, Reg SHO Short Sale Price Test Restricted Indicator, Trading Action, and Symbol Directory). See Equity 7, Section 3, PSX Last Sale and Nasdaq Last Sale Plus Data feeds (b).

⁹ See Securities Exchange Act Release No. 75890 (September 10, 2015), 80 FR 55692 (September 16, 2015) (SR-Phlx-2015-76) (explaining that, in distributing NLS Plus, Nasdaq performs “precisely the same functions as Bloomberg, Thomson Reuters, and dozens of other market data vendors; and the contents of the NLS Plus data stream are similar in nature to what is distributed by other exchanges.”).

At the close of each trading day, Nasdaq disseminates an EOD summary message on NLS Plus that includes the following information for all active Nasdaq- and non-Nasdaq-listed securities:

- Nasdaq Price High: The highest price reported for a last sale transaction on any Nasdaq venue for the issue symbol during the current trading day.
- Nasdaq Price Low: The lowest price reported for a last sale transaction on any Nasdaq venue for the issue symbol during the current trading day.
- Nasdaq Price Closing: For Nasdaq-listed securities, this is the Nasdaq Official Closing Price value, if available. For non-Nasdaq-listed securities, it is the final last sale eligible transaction reported by any Nasdaq venue for the issue during normal market hours.
- Consolidated Volume: Reflects the total volume for the issue reported at the consolidated market level.¹⁰

Proposal

The Exchange proposes to enhance the current EOD summary message by providing the open, high, low, close and volume of a security based on the consolidated data provided by the UTP and CTA/CQ plans for Tape A, B¹¹ and C¹² securities. This

¹⁰ See NLS Plus Version 3.0 Technical Specifications, Section 5.8.5 (End of Day Trading Summary) at 29, available at <http://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/NLSPlusSpecification3.0.pdf>.

¹¹ Tape A and Tape B securities are disseminated pursuant to the Security Industry Automation Corporation's (SIAC's) Consolidated Tape Association Plan/Consolidated Quotation System ("CTA/CQS" or "CTA").

¹² Tape C securities are disseminated pursuant to the NASDAQ Unlisted Trading Privileges ("UTP") Plan.

will require replacing the current high, low, and close on the Nasdaq exchanges with the following three fields:

- Consolidated Price High: The highest price of any high/low eligible transaction on Tapes A, B or C received on the trading day.
- Consolidated Price Low: The lowest price of any high/low eligible transaction on Tapes A, B or C received on the trading day.
- Consolidated Price Close: The final last sale eligible transaction on Tapes A, B or C received on the trading day.¹³

It will also require adding the following new field to the EOD summary message:

- Consolidated Price Open: The first last sale eligible transaction received on the trading day for Tapes A, B or C.

The Consolidated Volume field will not change.

The above data will be available to users of the NLS Plus feed on a delayed basis, 15 minutes after the real-time dissemination of the above data points on the UTP and CTA/CQ data feeds for that day. The Exchange is not proposing any change to NLS Plus fees as a result of this modification.

Discussion

The NLS Plus data feed, designed for distribution to the investing public,¹⁴ is purchased by broker-dealers for dissemination to retail investors in the context of the

¹³ If there are no trades or no qualifying trades for a specific issue, all relevant fields for the EOD summary message will be left blank.

¹⁴ See Securities Exchange Act Release No. 75890 (September 10, 2015), 80 FR 55692 (September 16, 2015) (SR-Phlx-2015-76) (explaining that Nasdaq, in distributing NLS Plus, “combines publicly available data from the three filed last sale products of the [Nasdaq] equity markets and from the network processors for

brokerage relationship and financial media websites for the general investing public, among others. Approximately 30 firms that purchase or may purchase NLS Plus have requested that Nasdaq modify the EOD summary information to help investors place trades on the Nasdaq exchanges in the context of U.S. markets as a whole, rather than just the Nasdaq exchanges. Specifically, these firms requested that Nasdaq use benchmark prices for the high, low, opening and closing price of a security as published by the securities information processors to help investors understand price movements on the Nasdaq exchanges.

This suggestion by Nasdaq's customers is comparable to changes in the end of day messages undertaken recently by two of Nasdaq's chief competitors, Cboe and NYSE, in their top-of-book data feeds. In 2020, both amended their end of day messages to identify the primary listing market's official opening and closing price after a 15-minute delay, which, similar to the proposal by Nasdaq's customers, establish an external benchmark against which to evaluate exchange data.¹⁵

In light of customer requests and changing industry standards, the Exchange has determined that the requested change to the EOD summary message is in the best interest of our customers. The end of day data published by the securities information processors

the ease and convenience of market data users and vendors, and ultimately the investing public.”).

¹⁵ See Securities Exchange Act Release No. 89083 (June 17, 2020), 85 FR 37706 (June 23, 2020) (SR-CboeEDGX-2020-029) (amending the content of the Cboe One Feed to identify the primary listing market's official opening and closing price after a 15 minute delay, effective July 10, 2020); NYSE Best Quote and Trades Client Specification, Version 2.3a (March 30, 2020) available at https://www.nyse.com/publicdocs/nyse/data/NYSE_BQT_Client_Specification_v2.3a.pdf (updated on January 31, 2020, to publish the listing market official opening and closing price in the Consolidated Stock Summary Messages).

provides useful information on the state of the U.S. market as a whole, and including it on the NLS Plus feed will enhance investor understanding of the proprietary data distributed by the Exchange.¹⁶ The proposal will also provide consumers with greater choice by offering an alternative to other EOD summaries offered in the market. The Exchange therefore proposes to modify its EOD summary message to provide the Open, High, Low, Close and Volume of a security based on the consolidated data provided by the SIPs. This EOD message will be based on data obtained from the securities information processors, and will be distributed by Nasdaq as a vendor of SIP data, and will be subject to competition from all distributors of SIP data.

The proposed change to the EOD summary message is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants, and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other.¹⁷

The Exchange expects that the new EOD message will be attractive to potential customers, and, based on conversations with potential customers and our overall

¹⁶ Any customer that requires access to the high, low, and closing price of a security on the Nasdaq equity exchanges alone, and not the U.S. markets as a whole, would continue to have access to that information on the real-time NLS Plus data feed.

¹⁷ Although this is not a fee filing, the Exchange is addressing this question to provide as complete as possible an evaluation of the proposed change. See Division of Trading and Markets, U.S. Securities and Exchange Commission, “Staff Guidance on SRO Filings Related to Fees” (May 21, 2019) (“Staff Guidance”), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees> (indicating that the discussion of purpose should indicate “whether the relevant product or service, including the corresponding proposed fee or fee change, is targeted at – or expected to be limited in its applicability to – a specific segment(s) of market participants (and if so, the related details)”).

familiarity with the market, the Exchange expects between approximately 10 and 20 additional customers for NLS Plus as a result of the proposed change.¹⁸

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In 2015, the Commission found the creation of the NLS Plus data feed to be “consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest”²¹ The NLS Plus Approval Order noted that NLS Plus disseminated an End of Day Trade Summary among other

¹⁸ See id. (requesting that the discussion of purpose address “the projected number of purchasers (including members, as well as non-members) of any new or modified product or service and the expected number of purchasers likely to be subject to a new fee or pricing tier, including members and non-members . . .”).

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See Securities Exchange Act Release No. 75257 (June 22, 2015), 80 FR 36862, 36864 (June 26, 2015) (SR-Nasdaq-2015-055) (“NLS Plus Approval Order”); see also Securities Exchange Act Release No. 75763 (August 26, 2015), 80 FR 52817 (September 1, 2015) (SR-Phlx-2015-72) (adding NLS Plus to the PSX Last Sale portion of the Phlx fee schedule).

messages,²² and consolidated volume information obtained from the UTP and CTA Plans.²³ As NLS Plus and the current end of day messages and volume information have already been shown to be consistent with Section 6(b) of the Act, this analysis therefore focuses on the consistency of the proposal to enhance the EOD summary message with data on the open, high, low and closing price of a security published by the SIPs.

NLS Plus competes with the substitute top-of-book proprietary data products offered by other exchanges, including the NYSE BQT feed, which disseminates top-of-book information from the NYSE, NYSE American, NYSE Arca, NYSE National, and NYSE Chicago exchanges,²⁴ and the Cboe One Summary Feed, which disseminates data

²² See NLS Plus Approval Order, 80 FR 36862 at 36863. (“In addition to last sale information, NLS Plus also disseminates the following data elements: Trade Price, Trade Size, Sale Condition Modifiers, Cumulative Consolidated Market Volume, End of Day Trade Summary, Adjusted Closing Price, IPO Information, and Bloomberg ID (together the ‘data elements’). NLS Plus also features and disseminates the following messages: Market Wide Circuit Breaker, Reg SHO Short Sale Price Test Restricted Indicator, Trading Action, Symbol Directory, Adjusted Closing Price, and End of Day Trade Summary (together the “messages”).”).

²³ See *id.* (“Consolidated volume reflects the consolidated volume at the time that the NLS Plus trade message is generated, and includes the volume for the issue symbol as reported on the consolidated market data feed. The consolidated volume is based on the real-time trades reported via the UTP Trade Data Feed (‘UTDF’) and delayed trades reported via CTA. NASDAQ OMX calculates the real-time trading volume for its trading venues, and then adds the real-time trading volume for the other (non-NASDAQ OMX) trading venues as reported via the UTDF data feed. For non-NASDAQ-listed issues, the consolidated volume is based on trades reported via SIAC’s Consolidated Tape System (‘CTS’) for the issue symbol. The Exchange calculates the real-time trading volume for its trading venues, and then adds the 15-minute delayed trading volume for the other (non-NASDAQ OMX) trading venues as reported via the CTS data feed.”).

²⁴ See Securities Exchange Act Release No. 87803 (December 19, 2019), 84 FR 71505 (December 27, 2019) (SR-NYSE-2019-70) (explaining that the NYSE BQT market data product competes “head to head with the Nasdaq Basic and Cboe One Feed market data products.”).

from the BZX Exchange, BYX Exchange, EDGX Exchange and EDGA Exchange.²⁵ NLS Plus also competes with the offerings of data vendors that distribute the proprietary data feeds of Nasdaq and other exchanges. Of particular importance here, Nasdaq obtains data from the SIPs on the same terms as any data vendor, and Nasdaq has no latency, cost, or other advantage in the distribution of end of day SIP data as proposed herein. Retail customers are potentially able to obtain such information from any distributor of SIP data.

This Proposal reflects the competitive nature of these markets. As noted above, both NYSE and Cboe expanded their end of day summary messages in 2020 to identify the primary listing market's official opening and closing price after a 15-minute delay.²⁶ The Exchange's change to the EOD summary message is, in part, a competitive response to the data feed changes introduced by these two competitors. The Proposal also promotes competition by providing investors with an additional option for receiving consolidated EOD security data.

²⁵ See https://markets.cboe.com/us/equities/market_data_services/#:~:text=Cboe%20To%20is%20a%20real,time%20on%20a%20Cboe%20book.&text=It%20is%20a%20real%2Dtime,time%20on%20a%20Cboe%20book We note that Cboe recently proposed a fee reduction for top-of-book data as well. See Securities Exchange Act Release No. 86670 (August 14, 2019), 84 FR 43207 (August 20, 2019) (SR-CboeBYX-2019-012).

²⁶ See Securities Exchange Act Release No. 89083 (June 17, 2020), 85 FR 37706 (June 23, 2020) (SR-CboeEDGX-2020-029) (amending the content of the Cboe One Feed to identify the primary listing market's official opening and closing price, effective July 10, 2020); NYSE Best Quote and Trades Client Specification, Version 2.3a (March 30, 2020), available at https://www.nyse.com/publicdocs/nyse/data/NYSE_BQT_Client_Specification_v2.3a.pdf (updated on January 31, 2020, to publish the listing market official opening and closing price in the Consolidated Stock Summary Messages).

Moreover, as explained above, the Proposal will enhance investor understanding of the proprietary data distributed by the Exchange by providing a benchmark against which to compare such changes.

Competition with other exchanges in the sale of top-of-book products, coupled with potential competition from vendors in the distribution of proprietary and consolidated data feeds, and the likelihood that the Proposal will enhance investor understanding of securities markets and promote consumer choice, all provide a substantial basis for finding that the Proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and protects investors and the public interest.

The Proposal is not unfairly discriminatory. As noted previously, the NLS Plus data feed was found to be non-discriminatory and otherwise consistent with the Act in 2015.²⁷ The only change here is to enhance the EOD summary message with data on the open, high, low and closing price of a security published by the SIPs. As explained above, the proposed change to the EOD summary message is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants, and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. The proposed EOD summary message will be available to all NLS Plus purchasers, without differentiation of any kind, and is therefore not unfairly discriminatory.

²⁷ See Securities Exchange Act Release No. 75257 (June 22, 2015), 80 FR 36862, 36864 (June 26, 2015) (SR-Nasdaq-2015-055) (“NLS Plus Approval Order”).

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.

Intermarket Competition

The Proposal, which adds the high, low, opening and closing price of a security as published by the SIPs to the NLS Plus EOD message, will place no burden on intermarket competition (the competition among SROs). As explained above, NLS Plus already competes directly against the NYSE BQT feed and the Cboe One Summary Feed, and is subject to potential competition from market data vendors. In the particular context of distributing the proposed EOD message, the Exchange is in direct competition with any vendor of SIP information, and any vendor not currently distributing SIP data would be able to do so by obtaining such information from the SIPs and adding that information to their market data products. Rather than place a burden competition, the Proposal will enhance competition by providing consumers with greater choice through an alternative EOD summary not currently offered by NYSE or Cboe.

Intramarket Competition

The Proposal will not cause any unnecessary or inappropriate burden on intramarket competition (competition among exchange customers). As explained above, the Proposal is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants, and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. As such, the Proposal does not place any category of market participant at a

relative disadvantage compared to any other market participant, and therefore will not impose any burden on competition not necessary or appropriate in furtherance 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)²⁸ of the Act and Rule 19b-4(f)(6) thereunder²⁹ 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 Proposal does not significantly affect the protection of investors or the public interest or impose any significant burden on competition. The NLS Plus data feed was designed to benefit retail investors and the general investing public. Supplementing that feed with the opening, high, low and closing price of a security published by the SIPs, in response to customer requests, will provide customers with a broader benchmark against which to compare trades on the Nasdaq exchanges, and will improve investor

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6).

understanding of security price movements published on the NLS Plus feed. The Proposal will not burden competition, but rather will enhance competition by providing consumers with greater choice by offering an alternative EOD summary not currently offered by NYSE or Cboe.

Furthermore, Rule 19b-4(f)(6)(iii)³⁰ 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.

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

The proposed changes to NLS Plus are based on a filing by Nasdaq published in the Federal Register on March 8, 2021.³¹

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

Not applicable.

³⁰ 17 CFR 240.19b-4(f)(6)(iii).

³¹ See Securities Exchange Act Release No. 91241 (March 2, 2021), 86 FR 13427 (March 8, 2021) (SR-Nasdaq-2021-010).

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-2021-17)

March __, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Enhance the End of Day Summary Message on Nasdaq Last Sale Plus

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 March 19, 2021, 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 enhance the End of Day (“EOD”) summary message on Nasdaq Last Sale (“NLS”) Plus by replacing the current high, low and closing price of a security based on its trading on Phlx, The Nasdaq Stock Market, LLC (“Nasdaq”), and Nasdaq BX, Inc. (“BX” or “Nasdaq BX”) with the high, low and closing price of a security published by the securities information processors (“SIPs”), and adding the opening price of a security as published by the SIPs to that message. This is a companion filing that will modify the definition of NLS Plus contained in the Nasdaq Phlx Rulebook to conform to the definitions provided in the Nasdaq and Nasdaq BX rulebooks.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it 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 enhance the EOD summary message on NLS Plus by replacing the current high, low and closing price of a security based on its trading on the Phlx, Nasdaq, and Nasdaq BX exchanges with the consolidated high, low and closing price as published by the SIPs, and adding the opening price of a security published by the SIPs to that message.³ The proposed changes to NLS Plus were filed by Nasdaq on February 17, 2021, and published in the Federal Register on March 8, 2021.⁴ Nasdaq BX will be submitting a similar filing concurrently with this filing. The purpose of this filing

³ The securities information processors issue consolidated trade information pursuant to the UTP Plan and the CTA/CQ Plan.

⁴ See Securities Exchange Act Release No. 91241 (March 2, 2021), 86 FR 13427 (March 8, 2021) (SR-Nasdaq-2021-010).

is to modify the definition of NLS Plus in the Nasdaq Phlx Rulebook to conform to the definitions provided in the Nasdaq and Nasdaq BX rulebooks.

Nasdaq's proposal to enhance the EOD summary message on NLS Plus was in response to requests by firms using NLS Plus for a broader benchmark against which to compare trades on the Nasdaq exchanges. Specifically, approximately 30 firms have requested that Nasdaq distribute benchmark prices on NLS Plus to provide retail investors and the general investing public with a static benchmark against which to compare the price movements shown on NLS Plus using standard high, low, opening and closing prices for U.S. markets as a whole. In response to that feedback, and also partly in response to recent changes by competitor exchanges to their end of day messages,⁵ the Exchange proposes to enhance its EOD message for NLS Plus—which currently provides the high, low and closing price of a security based on its trading on Nasdaq affiliates—with a new EOD message that provides the high, low and closing price published by the SIPs, and add a new field with the opening price of a security as published by the SIPs.⁶

⁵ See Securities Exchange Act Release No. 89083 (June 17, 2020), 85 FR 37706 (June 23, 2020) (SR-CboeEDGX-2020-029) (amending the content of the Cboe One Feed to identify the primary listing market's official opening and closing price); NYSE Best Quote and Trades Client Specification (March 30, 2020) (updated on January 31, 2020, to publish the listing market official opening and closing price in the Consolidated Stock Summary Messages) available at https://www.nyse.com/publicdocs/nyse/data/NYSE_BQT_Client_Specification_v2.3a.pdf.

⁶ The Proposal also clarifies the description of the information provided in NLS Plus. It removes an unnecessary sentence at the end of the description of NLS Plus stating that volume information reflects trading activity in Tape A and B Securities, and replaces it with an earlier reference to Tape A and B securities that provides the same information. It also separates the description of the end of day trade summary into two sentences for greater clarity: the first sentence lists the data provided by the Nasdaq equity exchanges, and the second sentence identifies the consolidated information obtained from Tapes A, B and C. The phrases “as well as consolidated volume of,” and “Cumulative Consolidated Market Volume”

The Exchange proposes that this change become operative on May 17, 2021, to allow time to conduct customer testing in advance of the date of launch.

Nasdaq Last Sale Plus

NLS Plus is a comprehensive data feed that offers retail investors, the general investing public, and other customers access to the last sale products offered by Phlx,⁷ Nasdaq, and Nasdaq BX, and the consolidated volume information published on the SIPs for Tapes A, B, and C, in a convenient format that includes both real-time and end of day information.⁸ It is, in essence, a market data vendor product that consolidates information from multiple Nasdaq exchanges and the SIPs. This product directly competes against similar products offered by other exchanges, and faces potential

are deleted to remove repetitive language that might cause confusion. This filing also replaces an outdated reference to Nasdaq Rule 7032 in Section 3, Nasdaq PSX Fees, PSX Last Sale and Nasdaq Last Sale Plus Data Feeds (b)(4) with the correct citation to Equity 7, Section 132 of the Nasdaq Rulebook. See Securities Exchange Act Release No. 84684 (November 29, 2018), 83 FR 62936 (December 6, 2018) (SR-NASDAQ-2018-098).

⁷ PSX Last Sale is comprised of two proprietary data feeds containing real-time last sale information for trades executed on the Exchange. “PSX Last Sale for Nasdaq” contains all such transaction reports for Nasdaq-listed stocks, and “PSX Last Sale for NYSE/NYSE Amex” contains all such transaction reports for NYSE-listed stocks and stocks listed on NYSE American and other Tape B listing venues. See Equity 7, Section 3, PSX Last Sale and Nasdaq Last Sale Plus Data feeds (a).

⁸ The full list of NLS Plus components is as follows: Trade Price, Trade Size, Sale Condition Modifiers, Cumulative Consolidated Market Volume for Tape A, B, and C securities, End of Day Trade Summary, Adjusted Closing Price, IPO Information, Bloomberg ID, and pertinent regulatory Information (such as Market Wide Circuit Breaker, Reg SHO Short Sale Price Test Restricted Indicator, Trading Action, and Symbol Directory). See Equity 7, Section 3, PSX Last Sale and Nasdaq Last Sale Plus Data feeds (b).

competition from data vendors, which can obtain and distribute SIP data on the same terms as Nasdaq.⁹

At the close of each trading day, Nasdaq disseminates an EOD summary message on NLS Plus that includes the following information for all active Nasdaq- and non-Nasdaq-listed securities:

- Nasdaq Price High: The highest price reported for a last sale transaction on any Nasdaq venue for the issue symbol during the current trading day.
- Nasdaq Price Low: The lowest price reported for a last sale transaction on any Nasdaq venue for the issue symbol during the current trading day.
- Nasdaq Price Closing: For Nasdaq-listed securities, this is the Nasdaq Official Closing Price value, if available. For non-Nasdaq-listed securities, it is the final last sale eligible transaction reported by any Nasdaq venue for the issue during normal market hours.
- Consolidated Volume: Reflects the total volume for the issue reported at the consolidated market level.¹⁰

⁹ See Securities Exchange Act Release No. 75890 (September 10, 2015), 80 FR 55692 (September 16, 2015) (SR-Phlx-2015-76) (explaining that, in distributing NLS Plus, Nasdaq performs “precisely the same functions as Bloomberg, Thomson Reuters, and dozens of other market data vendors; and the contents of the NLS Plus data stream are similar in nature to what is distributed by other exchanges.”).

¹⁰ See NLS Plus Version 3.0 Technical Specifications, Section 5.8.5 (End of Day Trading Summary) at 29, available at <http://www.nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/NLSPlusSpecification3.0.pdf>.

Proposal

The Exchange proposes to enhance the current EOD summary message by providing the open, high, low, close and volume of a security based on the consolidated data provided by the UTP and CTA/CQ plans for Tape A, B¹¹ and C¹² securities. This will require replacing the current high, low, and close on the Nasdaq exchanges with the following three fields:

- Consolidated Price High: The highest price of any high/low eligible transaction on Tapes A, B or C received on the trading day.
- Consolidated Price Low: The lowest price of any high/low eligible transaction on Tapes A, B or C received on the trading day.
- Consolidated Price Close: The final last sale eligible transaction on Tapes A, B or C received on the trading day.¹³

It will also require adding the following new field to the EOD summary message:

- Consolidated Price Open: The first last sale eligible transaction received on the trading day for Tapes A, B or C.

The Consolidated Volume field will not change.

The above data will be available to users of the NLS Plus feed on a delayed basis, 15 minutes after the real-time dissemination of the above data points on the UTP and

¹¹ Tape A and Tape B securities are disseminated pursuant to the Security Industry Automation Corporation's (SIAC's) Consolidated Tape Association Plan/Consolidated Quotation System ("CTA/CQS" or "CTA").

¹² Tape C securities are disseminated pursuant to the NASDAQ Unlisted Trading Privileges ("UTP") Plan.

¹³ If there are no trades or no qualifying trades for a specific issue, all relevant fields for the EOD summary message will be left blank.

CTA/CQ data feeds for that day. The Exchange is not proposing any change to NLS Plus fees as a result of this modification.

Discussion

The NLS Plus data feed, designed for distribution to the investing public,¹⁴ is purchased by broker-dealers for dissemination to retail investors in the context of the brokerage relationship and financial media websites for the general investing public, among others. Approximately 30 firms that purchase or may purchase NLS Plus have requested that Nasdaq modify the EOD summary information to help investors place trades on the Nasdaq exchanges in the context of U.S. markets as a whole, rather than just the Nasdaq exchanges. Specifically, these firms requested that Nasdaq use benchmark prices for the high, low, opening and closing price of a security as published by the securities information processors to help investors understand price movements on the Nasdaq exchanges.

This suggestion by Nasdaq's customers is comparable to changes in the end of day messages undertaken recently by two of Nasdaq's chief competitors, Cboe and NYSE, in their top-of-book data feeds. In 2020, both amended their end of day messages to identify the primary listing market's official opening and closing price after a 15-

¹⁴ See Securities Exchange Act Release No. 75890 (September 10, 2015), 80 FR 55692 (September 16, 2015) (SR-Phlx-2015-76) (explaining that Nasdaq, in distributing NLS Plus, "combines publicly available data from the three filed last sale products of the [Nasdaq] equity markets and from the network processors for the ease and convenience of market data users and vendors, and ultimately the investing public.").

minute delay, which, similar to the proposal by Nasdaq's customers, establish an external benchmark against which to evaluate exchange data.¹⁵

In light of customer requests and changing industry standards, the Exchange has determined that the requested change to the EOD summary message is in the best interest of our customers. The end of day data published by the securities information processors provides useful information on the state of the U.S. market as a whole, and including it on the NLS Plus feed will enhance investor understanding of the proprietary data distributed by the Exchange.¹⁶ The proposal will also provide consumers with greater choice by offering an alternative to other EOD summaries offered in the market. The Exchange therefore proposes to modify its EOD summary message to provide the Open, High, Low, Close and Volume of a security based on the consolidated data provided by the SIPs. This EOD message will be based on data obtained from the securities information processors, and will be distributed by Nasdaq as a vendor of SIP data, and will be subject to competition from all distributors of SIP data.

The proposed change to the EOD summary message is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants, and no

¹⁵ See Securities Exchange Act Release No. 89083 (June 17, 2020), 85 FR 37706 (June 23, 2020) (SR-CboeEDGX-2020-029) (amending the content of the Cboe One Feed to identify the primary listing market's official opening and closing price after a 15 minute delay, effective July 10, 2020); NYSE Best Quote and Trades Client Specification, Version 2.3a (March 30, 2020) available at https://www.nyse.com/publicdocs/nyse/data/NYSE_BQT_Client_Specification_v2.3a.pdf (updated on January 31, 2020, to publish the listing market official opening and closing price in the Consolidated Stock Summary Messages).

¹⁶ Any customer that requires access to the high, low, and closing price of a security on the Nasdaq equity exchanges alone, and not the U.S. markets as a whole, would continue to have access to that information on the real-time NLS Plus data feed.

segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other.¹⁷

The Exchange expects that the new EOD message will be attractive to potential customers, and, based on conversations with potential customers and our overall familiarity with the market, the Exchange expects between approximately 10 and 20 additional customers for NLS Plus as a result of the proposed change.¹⁸

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

¹⁷ Although this is not a fee filing, the Exchange is addressing this question to provide as complete as possible an evaluation of the proposed change. See Division of Trading and Markets, U.S. Securities and Exchange Commission, “Staff Guidance on SRO Filings Related to Fees” (May 21, 2019) (“Staff Guidance”), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees> (indicating that the discussion of purpose should indicate “whether the relevant product or service, including the corresponding proposed fee or fee change, is targeted at – or expected to be limited in its applicability to – a specific segment(s) of market participants (and if so, the related details))”.

¹⁸ See *id.* (requesting that the discussion of purpose address “the projected number of purchasers (including members, as well as non-members) of any new or modified product or service and the expected number of purchasers likely to be subject to a new fee or pricing tier, including members and non-members . . .”).

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

In 2015, the Commission found the creation of the NLS Plus data feed to be “consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest”²¹ The NLS Plus Approval Order noted that NLS Plus disseminated an End of Day Trade Summary among other messages,²² and consolidated volume information obtained from the UTP and CTA Plans.²³ As NLS Plus and the current end of day messages and volume information have

²¹ See Securities Exchange Act Release No. 75257 (June 22, 2015), 80 FR 36862, 36864 (June 26, 2015) (SR-Nasdaq-2015-055) (“NLS Plus Approval Order”); see also Securities Exchange Act Release No. 75763 (August 26, 2015), 80 FR 52817 (September 1, 2015) (SR-Phlx-2015-72) (adding NLS Plus to the PSX Last Sale portion of the Phlx fee schedule).

²² See NLS Plus Approval Order, 80 FR 36862 at 36863. (“In addition to last sale information, NLS Plus also disseminates the following data elements: Trade Price, Trade Size, Sale Condition Modifiers, Cumulative Consolidated Market Volume, End of Day Trade Summary, Adjusted Closing Price, IPO Information, and Bloomberg ID (together the ‘data elements’). NLS Plus also features and disseminates the following messages: Market Wide Circuit Breaker, Reg SHO Short Sale Price Test Restricted Indicator, Trading Action, Symbol Directory, Adjusted Closing Price, and End of Day Trade Summary (together the “messages”).”).

²³ See *id.* (“Consolidated volume reflects the consolidated volume at the time that the NLS Plus trade message is generated, and includes the volume for the issue symbol as reported on the consolidated market data feed. The consolidated volume is based on the real-time trades reported via the UTP Trade Data Feed (‘UTDF’) and delayed trades reported via CTA. NASDAQ OMX calculates the real-time trading volume for its trading venues, and then adds the real-time trading volume for the other (non-NASDAQ OMX) trading venues as reported via the UTDF data feed. For non-NASDAQ-listed issues, the consolidated volume is based on trades reported via SIAC’s Consolidated Tape System (‘CTS’) for the issue symbol. The Exchange calculates the real-time trading volume for its trading venues, and then adds the 15-minute delayed trading volume for the other (non-NASDAQ OMX) trading venues as reported via the CTS data feed.”).

already been shown to be consistent with Section 6(b) of the Act, this analysis therefore focuses on the consistency of the proposal to enhance the EOD summary message with data on the open, high, low and closing price of a security published by the SIPs.

NLS Plus competes with the substitute top-of-book proprietary data products offered by other exchanges, including the NYSE BQT feed, which disseminates top-of-book information from the NYSE, NYSE American, NYSE Arca, NYSE National, and NYSE Chicago exchanges,²⁴ and the Cboe One Summary Feed, which disseminates data from the BZX Exchange, BYX Exchange, EDGX Exchange and EDGA Exchange.²⁵

NLS Plus also competes with the offerings of data vendors that distribute the proprietary data feeds of Nasdaq and other exchanges. Of particular importance here, Nasdaq obtains data from the SIPs on the same terms as any data vendor, and Nasdaq has no latency, cost, or other advantage in the distribution of end of day SIP data as proposed herein. Retail customers are potentially able to obtain such information from any distributor of SIP data.

This Proposal reflects the competitive nature of these markets. As noted above, both NYSE and Cboe expanded their end of day summary messages in 2020 to identify

²⁴ See Securities Exchange Act Release No. 87803 (December 19, 2019), 84 FR 71505 (December 27, 2019) (SR-NYSE-2019-70) (explaining that the NYSE BQT market data product competes “head to head with the Nasdaq Basic and Cboe One Feed market data products.”).

²⁵ See https://markets.cboe.com/us/equities/market_data_services/#:~:text=Cboe%20Top%20is%20a%20real,time%20on%20a%20Cboe%20book.&text=It%20is%20a%20real%2Dtime,time%20on%20a%20Cboe%20book We note that Cboe recently proposed a fee reduction for top-of-book data as well. See Securities Exchange Act Release No. 86670 (August 14, 2019), 84 FR 43207 (August 20, 2019) (SR-CboeBYX-2019-012).

the primary listing market's official opening and closing price after a 15-minute delay.²⁶ The Exchange's change to the EOD summary message is, in part, a competitive response to the data feed changes introduced by these two competitors. The Proposal also promotes competition by providing investors with an additional option for receiving consolidated EOD security data.

Moreover, as explained above, the Proposal will enhance investor understanding of the proprietary data distributed by the Exchange by providing a benchmark against which to compare such changes.

Competition with other exchanges in the sale of top-of-book products, coupled with potential competition from vendors in the distribution of proprietary and consolidated data feeds, and the likelihood that the Proposal will enhance investor understanding of securities markets and promote consumer choice, all provide a substantial basis for finding that the Proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and protects investors and the public interest.

The Proposal is not unfairly discriminatory. As noted previously, the NLS Plus data feed was found to be non-discriminatory and otherwise consistent with the Act in

²⁶ See Securities Exchange Act Release No. 89083 (June 17, 2020), 85 FR 37706 (June 23, 2020) (SR-CboeEDGX-2020-029) (amending the content of the Cboe One Feed to identify the primary listing market's official opening and closing price, effective July 10, 2020); NYSE Best Quote and Trades Client Specification, Version 2.3a (March 30, 2020), available at https://www.nyse.com/publicdocs/nyse/data/NYSE_BQT_Client_Specification_v2.3a.pdf (updated on January 31, 2020, to publish the listing market official opening and closing price in the Consolidated Stock Summary Messages).

2015.²⁷ The only change here is to enhance the EOD summary message with data on the open, high, low and closing price of a security published by the SIPs. As explained above, the proposed change to the EOD summary message is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants, and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. The proposed EOD summary message will be available to all NLS Plus purchasers, without differentiation of any kind, and is therefore not unfairly discriminatory.

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.

Intermarket Competition

The Proposal, which adds the high, low, opening and closing price of a security as published by the SIPs to the NLS Plus EOD message, will place no burden on intermarket competition (the competition among SROs). As explained above, NLS Plus already competes directly against the NYSE BQT feed and the Cboe One Summary Feed, and is subject to potential competition from market data vendors. In the particular context of distributing the proposed EOD message, the Exchange is in direct competition with any vendor of SIP information, and any vendor not currently distributing SIP data would be able to do so by obtaining such information from the SIPs and adding that information to their market data products. Rather than place a burden competition, the

²⁷ See Securities Exchange Act Release No. 75257 (June 22, 2015), 80 FR 36862, 36864 (June 26, 2015) (SR-Nasdaq-2015-055) (“NLS Plus Approval Order”).

Proposal will enhance competition by providing consumers with greater choice through an alternative EOD summary not currently offered by NYSE or Cboe.

Intramarket Competition

The Proposal will not cause any unnecessary or inappropriate burden on intramarket competition (competition among exchange customers). As explained above, the Proposal is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants, and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. As such, the Proposal does not place any category of market participant at a relative disadvantage compared to any other market participant, and therefore will not impose any burden on competition not necessary or appropriate in furtherance 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 Act²⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁹

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 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

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.

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-2021-17 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-2021-17. 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

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.

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-2021-17 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.³⁰

J. Matthew DeLesDernier
Assistant Secretary

³⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

NASDAQ PHLX LLC RULES**Equity Rules****Equity 7 Pricing Schedule****Section 3 Nasdaq PSX Fees**

* * * * *

PSX Last Sale and Nasdaq Last Sale Plus Data Feeds

(a) No change.

(b) Nasdaq Last Sale Plus (“NLS Plus”). NLS Plus is a comprehensive data feed produced by Nasdaq Information LLC. It provides last sale data from the [as well as consolidated volume of]Nasdaq U.S. equity markets (PSX, The Nasdaq Stock Market (“Nasdaq”), and Nasdaq BX (“BX”)) and the FINRA/Nasdaq Trade Reporting Facility (“TRF”). NLS Plus also reflects cumulative volume real-time trading activity across all U.S. exchanges for Tape A, B, and C securities.

NLS Plus also contains the following data from the Nasdaq U.S. equity markets: Trade Price, Trade Size, Sale Condition Modifiers, [Cumulative Consolidated Market Volume, End of Day Trade Summary,]Adjusted Closing Price, IPO Information, and Bloomberg ID. Additionally, pertinent regulatory information such as Market Wide Circuit Breaker, Reg SHO Short Sale Price Test Restricted Indicator, Trading Action, and Symbol Directory are included. In addition, Nasdaq Last Sale Plus provides a consolidated end of day trade summary for Tape A, B and C securities. NLS Plus may be received by itself or in combination with Nasdaq Basic. [Additionally, NLS Plus reflects cumulative volume real-time trading activity across all U.S. exchanges for Tape A securities and Tape B securities.]

- (1) Firms that receive NLS Plus shall pay the monthly administrative fees for NLS, BX Last Sale, and PSX Last Sale. Additionally, Internal Distributors or External Distributors shall pay a data consolidation fee of \$350 per month. “Internal Distributors” are Distributors that receive NLS Plus data and then distribute that data to one or more Subscribers within the Distributor’s own entity. “External Distributors” are Distributors that receive NLS Plus data and then distribute that data to one or more Subscribers outside the Distributor’s own entity.
- (2) Firms that receive NLS Plus would either be liable for NLS fees or Nasdaq Basic fees.

- (3) In the event that Nasdaq BX and/or Nasdaq PHLX adopt user fees for BX Last Sale and/or PSX Last Sale, firms that receive NLS Plus would also be liable for such fees.
- (4) Firms that purchase a market data enterprise license for display usage under Equity 7, Section 132 of the Nasdaq Rulebook[Nasdaq Rule 7032] shall not pay monthly administrative fees for NLS, BX Last Sale and PSX Last Sale, a data consolidation fee for Internal or External Distributors, or user fees for BX Last Sale and/or PSX Last Sale, in the event that such fees are adopted.

* * * * *