

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 amend Options 2, Section 5, Electronic Market Maker Obligations and Quoting Requirements

**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 \* Angela Last Name \* Dunn  
Title \* Principal Associate General Counsel  
E-mail \* angela.dunn@nasdaq.com  
Telephone \* (215) 496-5692 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 06/30/2021 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend Options 2, Section 5, Electronic Market Maker Obligations and Quoting Requirements.

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 of the Exchange (the “Board”) on November 5, 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:

Angela Saccomandi Dunn  
Principal Associate General Counsel  
Nasdaq, Inc.  
215-496-5692

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

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

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

a. Purpose

The Exchange proposes to amend Phlx Rules at Options 2, Section 5, Electronic Market Maker Obligations and Quoting Requirements. Currently, the Exchange requires Market Makers<sup>3</sup> and Lead Market Makers<sup>4</sup> to enter bids and offers for the options to which they are registered, except in an assigned options series listed intra-day on the Exchange.<sup>5</sup> Quotations must meet the legal quote width requirements specified in

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<sup>3</sup> A “Market Maker” means a Streaming Quote Trader or a Remote Streaming Quote Trader who enters quotations for his own account electronically into the System. See Options 1, Section 1(b)(28). A “Streaming Quote Trader” or “SQT” means a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the trading floor of the Exchange. An SQT may only submit quotes in classes of options in which the SQT is assigned. See Options 1, Section 1(b)(54). A “Remote Streaming Quote Trader” or “RSQT” means a Market Maker that is a member affiliated with an Remote Streaming Quote Trader Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Lead Market Maker upon Exchange approval. An RSQT is also known as a Remote Market Maker (“RMM”) pursuant to Options 2, Section 11. A Remote Streaming Quote Organization (“RSQTO”) or Remote Market Maker Organization (“RMO”) are Exchange member organizations that have qualified pursuant to Options 2, Section 1. See Options 1, Section 1(b)(49).

<sup>4</sup> A “Lead Market Maker” means a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). A Lead Market Maker includes a Remote Lead Market Maker which is defined as a Lead Market Maker in one or more classes that does not have a physical presence on an Exchange's trading floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 1, Section 1(b)(27).

<sup>5</sup> See Options 2, Section 5(c).

Options 2, Section 4(c).<sup>6</sup> On a daily basis, an electronic Market Maker must make markets consistent with the applicable quoting requirements. Market Makers (SQTs and RSQTs) associated with the same member organization<sup>7</sup> are collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as Phlx may announce in advance, for which that member organization's assigned options series are open for trading.<sup>8</sup> Notwithstanding the foregoing, a member organization is not required to make two-sided markets pursuant to Options 2, Section 5(c)(2) in any Quarterly Option Series, any adjusted option series,<sup>9</sup> and any option series with an expiration of nine months or greater.<sup>10</sup> Lead Market Makers (including Remote Lead Market Makers), associated with the same member organization, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as Phlx may announce in

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<sup>6</sup> Options 2, Section 4(c) describes the required bid/ask differentials.

<sup>7</sup> The term "member organization" means a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of General 3, Sections 5 and 10 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws. References herein to officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization. See General 1, Section 1(17).

<sup>8</sup> Options 2, Section 5(c)(2)(A).

<sup>9</sup> An adjusted option series is defined as an option series wherein one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares ("Adjusted Options Series"). See Options 2, Section 5(c)(2)(A)(i).

<sup>10</sup> Options 2, Section 5(c)(2)(A).

advance, for which that member organization's assigned options series are open for trading. Lead Market Makers are required to make two-sided markets pursuant to Options 2, Section 5 in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater.<sup>11</sup> Finally, a Directed SQT or RSQT is subject to the requirements within Options 2, Section 5(c)(2)(C).<sup>12</sup>

A member organization is required to meet each market making obligation separately.<sup>13</sup> Currently, Options 2, Section 5(c) states, "An SQT and RSQT<sup>14</sup> who is also

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<sup>11</sup> Options 2, Section 5(c)(2)(B).

<sup>12</sup> Directed SQTs and Directed RSQTs, associated with the same member organization, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as Phlx may announce in advance, for which that member organization's assigned options series are open for trading. A member organization shall be considered directed in all assigned options once the member organization receives a Directed Order in any option in which they are assigned and shall be considered a Directed SQT or Directed RSQT until such time as the member organization notifies the Exchange that they are no longer directed. Notwithstanding the foregoing, a member organization is not required to make two-sided markets pursuant to this paragraph (c)(2) above in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater. A Directed Order means any order to buy or sell which has been directed to a particular Lead Market Maker, RSQT, or SQT by an Order Flow Provider. To qualify as a Directed Order, an order must be delivered to the Exchange via the System. See also Options 2, Section 10(a)(i).

<sup>13</sup> See Options 2, Section 5(c). Today, the Exchange aggregates all quotes submitted through the Specialized Quote Feed interface from the member organization, regardless of whether the quote was submitted by the member organization in its capacity as Lead Market Maker or Market Maker.

<sup>14</sup> The Exchange notes that pursuant to a restriction within Options 2, Section 4(b)(2), only an SQT can simultaneously quote as a Lead Market Maker and an SQT. Options 2, Section 4(b)(2) provides, "An RSQT may only submit quotations electronically from off the floor of the Exchange. An RSQT may not simultaneously quote both as RSQT and Remote Lead Market Maker in a particular security. If an RSQT is a Remote Lead Market Maker in a particular security, the Remote Lead Market Maker must make a market as a Remote Lead Market Maker and may not make a market as an RSQT in that particular

the Lead Market Maker is held to the Lead Market Maker obligations in options series in which the Lead Market Maker is assigned and will be held to SQT and RSQT obligations in all other options series where assigned. An SQT or RSQT who receives a Directed Order shall be held to the standard of a Directed SQT or Directed RSQT, as appropriate.”

Today, the Exchange calculates whether a member organization that is assigned in an options series as both a Lead Market Maker and a Market Maker has met its quoting obligations as Lead Market Maker and Market Maker, respectively, by aggregating all quotes submitted through the Specialized Quote Feed<sup>15</sup> interface from the member organization, regardless of whether the quote was submitted by the member organization in its capacity as Lead Market Maker or Market Maker.

The Exchange proposes to amend its calculation to only consider quotes submitted through the Specialized Quote Feed interface utilizing badges<sup>16</sup> and options

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security.” Because an RSQT cannot also be a Lead Market Maker, the Exchange proposes to delete “an RSQT” as part of its amendment to Options 2, Section 5(c).

<sup>15</sup> “Specialized Quote Feed” or “SQF” is an interface that allows Lead Market Makers, SQTs and RSQTs to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from the Exchange. Features include the following: (1) options symbol directory messages (e.g. underlying and complex instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Lead Market Maker, SQT or RSQT. Lead Market Makers, SQTs and RSQTs may only enter interest into SQF in their assigned options series. See Options 3, Section 7(a)(i)(B).

<sup>16</sup> The term “badge” means an account number, which may contain letters and/or numbers, assigned to Lead Market Makers and Market Makers. A Lead Market Maker or Market Maker account may be associated with multiple badges. See Options 1, Section 1(b)(6).

series<sup>17</sup> assigned to a Lead Market Maker when calculating whether a member organization acting as a Lead Market Maker has satisfied the requirements to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as Phlx may announce for which that member organization's assigned options series are open for trading. Similarly, the Exchange proposes to only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and option series assigned to a Market Maker when calculating whether a member organization acting as a Market Maker has satisfied the requirements to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as Phlx may announce for which that member organization's assigned options series are open for trading. With this proposed change, a member organization that is a Market Maker (SQT) in an options series where the member organization is also assigned as the Lead Market Maker in an options series will be held to both the Lead Market Maker and Market Maker (SQT) obligations, pursuant to Options 2, Section 5(c), separately, in that option series. The Exchange will consider whether a member organization, acting as both Lead Market Maker and Market Maker in an assigned options series, has complied with each requirement by only considering quotes in the respective badges.

The Exchange notes that Floor Market Makers<sup>18</sup> and Floor Lead Market Makers<sup>19</sup> are not required to quote electronically in any designated percentage of series pursuant to

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<sup>17</sup> Phlx currently utilizes a badge without an associated options series to designate a Lead Market Maker assigned in an options series and a badge with an associated options series to designate a Market Maker assigned in an option series.

<sup>18</sup> The term "Floor Market Maker" is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. See Options 8, Section 2(a)(8).

Options 8, Section 27(a). Options 8, Section 27(f) provides for certain trading requirements applicable to Floor Market Makers.

By way of example,

**Current Quoting obligation methodology:**

Lead Market Maker firm ABC is assigned five badges: 123A, 123B, 123C, 123D and 123.

Badge 123 is designated the Lead Market Maker badge and badge 123A-D are designated as Market Maker badges.

Today, all quoting activity from all 5 badges is aggregated in determining if Firm 123 complied with the requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which that member organization's assigned options series are open for trading. The higher of the two obligations is required today.

**Proposed Quoting obligation methodology:**

Lead Market Maker firm ABC is assigned five badges: 123A, 123B, 123C, 123D and 123.

Badge 123 is designated the Lead Market Maker badge and badge 123A-D are designated as Market Maker badges.

As proposed only quoting activity from badge 123 (and excluding badges 123 A-D) would be counted toward the requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which that member organization's assigned options series are open for trading.

All other badges (123 A-D), excluding badge 123, would be counted toward the requirement to provide two-sided quotations in 60% of the cumulative number of seconds for which that member organization's assigned options series are open for trading.

A member organization may have only one Lead Market Maker badge per option series.

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<sup>19</sup> The term "Floor Lead Market Maker" is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange's trading floor. See Options 8, Section 2(a)(7).

The below example explains how the Exchange aggregates quotes from Lead Market Makers, in their assigned options series, to determine compliance with quoting requirements, which will not be changing pursuant to this proposal. The same calculation applies to quotes from Market Makers in their assigned options series.

Under the proposal, and as is the case today, by way of example, assume Lead Market Maker Firm ABC assigned in five symbols across 2 different badges:

Badge 123 is assigned in symbols QQQ and SPY.

Badge 124 is assigned in symbols IBM, GM, and MSFT.

Quotes submitted through the Specialized Quote Feed interface from the Firm ABC's Lead Market Maker badges from all 5 symbols will be counted in determining compliance with Firm ABC's requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which Firm ABC's assigned options series are open for trading.

If Firm ABC Lead Market Maker badge 123 quotes symbol QQQ at 95% and SPY at 90% and Firm ABC Lead Market Maker badge 124 quotes IBM at 85%, GM at 95%, and MSFT at 90% then Firm ABC will have met requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which Firm ABC's assigned options series are open for trading because the percentage across the 5 symbols is 91%.

#### Implementation

The Exchange proposes to implement this rule change on August 2, 2021. The Exchange has issued an Options Regulatory Alert notifying members and member organizations of this change.<sup>20</sup>

#### b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>22</sup> in particular,

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<sup>20</sup> See Options Regulatory Alert 2021-36.

<sup>21</sup> 15 U.S.C. 78f(b).

in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by requiring Lead Market Makers and Market Makers to separately meet quoting requirements as both a Lead Market Maker and Market Maker, respectively, when the member organization is assigned in both roles in an options series.

The Exchange's proposal to separately calculate Market Maker and Lead Market Maker quoting obligations where the member organization is assigned as both Lead Market Maker and Market Maker in an options series is consistent with the Act. Specifically, the Exchange's proposal would only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and options series assigned to a Lead Market Maker when calculating whether a member organization acting as a Lead Market Maker has satisfied the requirements to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as Phlx may announce for which that member organization's assigned options series are open for trading. Similarly, the Exchange's proposal would only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and option series assigned to a Market Maker when calculating whether a member organization acting as a Market Maker has satisfied the requirements to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as Phlx may announce for which that member organization's assigned options series are open for trading.

The proposed change for calculating the Lead Market Maker requirement separate from the Market Maker requirement, where a member organization is assigned in both roles in an options series, would ensure that the member organization quotes the requisite

number of seconds in an assigned options series, when acting as both Lead Market Maker and Market Maker. This would ensure that a member organization adds the requisite amount of liquidity in that assigned options series in exchange for certain benefits offered by the Exchange to the member organization, such as enhanced Lead Market Maker allocation<sup>23</sup> and favorable pricing,<sup>24</sup> in addition to the member organization fulfilling other market making obligations specified in Options 2, Section 5(a).<sup>25</sup>

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the

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<sup>23</sup> See Options 3, Section 10(a)(1)(B).

<sup>24</sup> See Options 7, Pricing Schedule.

<sup>25</sup> In registering as an electronic Market Maker, a member organization commits to various obligations. Transactions of an electronic Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and those member organizations should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Electronic Market Makers should not effect purchases or sales except in a reasonable and orderly manner. Ordinarily during trading hours, an electronic Market Maker must: (1) Maintain a two-sided market in those options in which the electronic Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market. (2) Engage, to a reasonable degree under the existing circumstances, in dealings for its own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of (or demand for) a particular option contract, or a temporary distortion of price relationships between option contracts of the same class. (3) Compete with other electronic Market Makers in all options in all capacities in which the electronic Market Maker is registered to trade. (4) Make markets that will be honored for the number of contracts entered into the System in all options in which the electronic Market Maker is registered to trade. (5) Update quotations in response to changed market conditions in all options in which the electronic Market Maker is registered to trade. (6) Maintain active markets in all options in which the electronic Market Maker is registered. (7) Honor all orders attributed to the electronic Market Maker that the System routes to away markets pursuant to Options 5, Section 4.

Act. Rather, the proposal would ensure that member organizations that are assigned in an options series as both the Lead Market Maker and Market Maker, respectively, are meeting the same quoting obligations as other member organizations who are assigned solely as either the Lead Market Maker or Market Maker in an option series. Also, this proposal would ensure that a member organization quotes the requisite number of seconds in an assigned options series, when acting as both Lead Market Maker and Market Maker, respectively, thereby adding the requisite amount of liquidity in exchange for certain benefits provided by the Exchange such as enhanced Lead Market Maker allocation<sup>26</sup> and favorable pricing,<sup>27</sup> in addition to fulfilling its other market making obligations specified in Options 2, Section 5(a).<sup>28</sup>

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)<sup>29</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>30</sup> in that it effects a change

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<sup>26</sup> See Options 3, Section 10(a)(1)(B).

<sup>27</sup> See Options 7, Pricing Schedule.

<sup>28</sup> See note 25 above.

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>30</sup> 17 CFR 240.19b-4(f)(6).

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 this proposal does not significantly affect the protection of investors or the public interest as the proposal ensure that a member organization adds the requisite amount of liquidity in that assigned options series in exchange for certain benefits offered by the Exchange to the member organization, such as enhanced Lead Market Maker allocation<sup>31</sup> and favorable pricing,<sup>32</sup> in addition to the member organization fulfilling other market making obligations specified in Options 2, Section 5(a).<sup>33</sup> The Exchange believes that this proposal does not impose any significant burden on competition as member organizations that are assigned in an options series as both the Lead Market Maker and Market Maker, respectively, would meet the same quoting obligations as other member organizations who are assigned solely as either the Lead Market Maker or Market Maker in an option series.

Furthermore, Rule 19b-4(f)(6)(iii)<sup>34</sup> requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that

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<sup>31</sup> See Options 3, Section 10(a)(1)(B).

<sup>32</sup> See Options 7, Pricing Schedule.

<sup>33</sup> See note 25 above.

<sup>34</sup> 17 CFR 240.19b-4(f)(6)(iii).

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 requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that it may amend the calculation of its quoting obligations to ensure that member organizations acting as both Lead Market Maker and Market Maker, respectively, are required to add the requisite amount of liquidity in exchange for certain benefits such as enhanced Lead Market Maker allocation<sup>35</sup> and favorable pricing.<sup>36</sup> The Exchange proposes to implement this rule change on August 2, 2021. The Exchange has provided members and member organizations notice of this proposed change.<sup>37</sup>

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<sup>35</sup> See Options 3, Section 10(a)(1)(B).

<sup>36</sup> See Options 7, Pricing Schedule.

<sup>37</sup> See Options Regulatory Alert 2021-36.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2021-38)

June \_\_, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 2, Section 5, Electronic Market Maker Obligations and Quoting Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 30, 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 amend Options 2, Section 5, Electronic Market Maker Obligations and Quoting Requirements.

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

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

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

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

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

1. Purpose

The Exchange proposes to amend Phlx Rules at Options 2, Section 5, Electronic Market Maker Obligations and Quoting Requirements. Currently, the Exchange requires Market Makers<sup>3</sup> and Lead Market Makers<sup>4</sup> to enter bids and offers for the options to which they are registered, except in an assigned options series listed intra-day on the

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<sup>3</sup> A "Market Maker" means a Streaming Quote Trader or a Remote Streaming Quote Trader who enters quotations for his own account electronically into the System. See Options 1, Section 1(b)(28). A "Streaming Quote Trader" or "SQT" means a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the trading floor of the Exchange. An SQT may only submit quotes in classes of options in which the SQT is assigned. See Options 1, Section 1(b)(54). A "Remote Streaming Quote Trader" or "RSQT" means a Market Maker that is a member affiliated with an Remote Streaming Quote Trader Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Lead Market Maker upon Exchange approval. An RSQT is also known as a Remote Market Maker ("RMM") pursuant to Options 2, Section 11. A Remote Streaming Quote Organization ("RSQTO") or Remote Market Maker Organization ("RMO") are Exchange member organizations that have qualified pursuant to Options 2, Section 1. See Options 1, Section 1(b)(49).

<sup>4</sup> A "Lead Market Maker" means a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). A Lead Market Maker includes a Remote Lead Market Maker which is defined as a Lead Market Maker in one or more classes that does not have a physical presence on an Exchange's trading floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 1, Section 1(b)(27).

Exchange.<sup>5</sup> Quotations must meet the legal quote width requirements specified in Options 2, Section 4(c).<sup>6</sup> On a daily basis, an electronic Market Maker must make markets consistent with the applicable quoting requirements. Market Makers (SQTs and RSQTs) associated with the same member organization<sup>7</sup> are collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as Phlx may announce in advance, for which that member organization's assigned options series are open for trading.<sup>8</sup> Notwithstanding the foregoing, a member organization is not required to make two-sided markets pursuant to Options 2, Section 5(c)(2) in any Quarterly Option Series, any adjusted option series,<sup>9</sup> and any option series with an expiration of nine months or greater.<sup>10</sup> Lead Market Makers (including Remote Lead Market Makers), associated with the same member

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<sup>5</sup> See Options 2, Section 5(c).

<sup>6</sup> Options 2, Section 4(c) describes the required bid/ask differentials.

<sup>7</sup> The term "member organization" means a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of General 3, Sections 5 and 10 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws. References herein to officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization. See General 1, Section 1(17).

<sup>8</sup> Options 2, Section 5(c)(2)(A).

<sup>9</sup> An adjusted option series is defined as an option series wherein one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares ("Adjusted Options Series"). See Options 2, Section 5(c)(2)(A)(i).

<sup>10</sup> Options 2, Section 5(c)(2)(A).

organization, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as Phlx may announce in advance, for which that member organization's assigned options series are open for trading. Lead Market Makers are required to make two-sided markets pursuant to Options 2, Section 5 in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater.<sup>11</sup> Finally, a Directed SQT or RSQT is subject to the requirements within Options 2, Section 5(c)(2)(C).<sup>12</sup>

A member organization is required to meet each market making obligation separately.<sup>13</sup> Currently, Options 2, Section 5(c) states, "An SQT and RSQT<sup>14</sup> who is also

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<sup>11</sup> Options 2, Section 5(c)(2)(B).

<sup>12</sup> Directed SQTs and Directed RSQTs, associated with the same member organization, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as Phlx may announce in advance, for which that member organization's assigned options series are open for trading. A member organization shall be considered directed in all assigned options once the member organization receives a Directed Order in any option in which they are assigned and shall be considered a Directed SQT or Directed RSQT until such time as the member organization notifies the Exchange that they are no longer directed. Notwithstanding the foregoing, a member organization is not required to make two-sided markets pursuant to this paragraph (c)(2) above in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater. A Directed Order means any order to buy or sell which has been directed to a particular Lead Market Maker, RSQT, or SQT by an Order Flow Provider. To qualify as a Directed Order, an order must be delivered to the Exchange via the System. See also Options 2, Section 10(a)(i).

<sup>13</sup> See Options 2, Section 5(c). Today, the Exchange aggregates all quotes submitted through the Specialized Quote Feed interface from the member organization, regardless of whether the quote was submitted by the member organization in its capacity as Lead Market Maker or Market Maker.

<sup>14</sup> The Exchange notes that pursuant to a restriction within Options 2, Section 4(b)(2), only an SQT can simultaneously quote as a Lead Market Maker and an SQT. Options 2, Section 4(b)(2) provides, "An RSQT may only submit quotations electronically from off the floor of the Exchange. An RSQT may not

the Lead Market Maker is held to the Lead Market Maker obligations in options series in which the Lead Market Maker is assigned and will be held to SQT and RSQT obligations in all other options series where assigned. An SQT or RSQT who receives a Directed Order shall be held to the standard of a Directed SQT or Directed RSQT, as appropriate.”

Today, the Exchange calculates whether a member organization that is assigned in an options series as both a Lead Market Maker and a Market Maker has met its quoting obligations as Lead Market Maker and Market Maker, respectively, by aggregating all quotes submitted through the Specialized Quote Feed<sup>15</sup> interface from the member organization, regardless of whether the quote was submitted by the member organization in its capacity as Lead Market Maker or Market Maker.

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simultaneously quote both as RSQT and Remote Lead Market Maker in a particular security. If an RSQT is a Remote Lead Market Maker in a particular security, the Remote Lead Market Maker must make a market as a Remote Lead Market Maker and may not make a market as an RSQT in that particular security.” Because an RSQT cannot also be a Lead Market Maker, the Exchange proposes to delete “an RSQT” as part of its amendment to Options 2, Section 5(c).

<sup>15</sup> “Specialized Quote Feed” or “SQF” is an interface that allows Lead Market Makers, SQTs and RSQTs to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from the Exchange. Features include the following: (1) options symbol directory messages (e.g. underlying and complex instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Lead Market Maker, SQT or RSQT. Lead Market Makers, SQTs and RSQTs may only enter interest into SQF in their assigned options series. See Options 3, Section 7(a)(i)(B).

The Exchange proposes to amend its calculation to only consider quotes submitted through the Specialized Quote Feed interface utilizing badges<sup>16</sup> and options series<sup>17</sup> assigned to a Lead Market Maker when calculating whether a member organization acting as a Lead Market Maker has satisfied the requirements to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as Phlx may announce for which that member organization's assigned options series are open for trading. Similarly, the Exchange proposes to only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and option series assigned to a Market Maker when calculating whether a member organization acting as a Market Maker has satisfied the requirements to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as Phlx may announce for which that member organization's assigned options series are open for trading. With this proposed change, a member organization that is a Market Maker (SQT) in an options series where the member organization is also assigned as the Lead Market Maker in an options series will be held to both the Lead Market Maker and Market Maker (SQT) obligations, pursuant to Options 2, Section 5(c), separately, in that option series. The Exchange will consider whether a member organization, acting as both Lead Market Maker and Market Maker in an assigned options series, has complied with each requirement by only considering quotes in the respective badges.

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<sup>16</sup> The term "badge" means an account number, which may contain letters and/or numbers, assigned to Lead Market Makers and Market Makers. A Lead Market Maker or Market Maker account may be associated with multiple badges. See Options 1, Section 1(b)(6).

<sup>17</sup> Phlx currently utilizes a badge without an associated options series to designate a Lead Market Maker assigned in an options series and a badge with an associated options series to designate a Market Maker assigned in an option series.

The Exchange notes that Floor Market Makers<sup>18</sup> and Floor Lead Market Makers<sup>19</sup> are not required to quote electronically in any designated percentage of series pursuant to Options 8, Section 27(a). Options 8, Section 27(f) provides for certain trading requirements applicable to Floor Market Makers.

By way of example,

**Current Quoting obligation methodology:**

Lead Market Maker firm ABC is assigned five badges: 123A, 123B, 123C, 123D and 123.

Badge 123 is designated the Lead Market Maker badge and badge 123A-D are designated as Market Maker badges.

Today, all quoting activity from all 5 badges is aggregated in determining if Firm 123 complied with the requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which that member organization's assigned options series are open for trading. The higher of the two obligations is required today.

**Proposed Quoting obligation methodology:**

Lead Market Maker firm ABC is assigned five badges: 123A, 123B, 123C, 123D and 123.

Badge 123 is designated the Lead Market Maker badge and badge 123A-D are designated as Market Maker badges.

As proposed only quoting activity from badge 123 (and excluding badges 123 A-D) would be counted toward the requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which that member organization's assigned options series are open for trading.

All other badges (123 A-D), excluding badge 123, would be counted toward the requirement to provide two-sided quotations in 60% of the cumulative number of

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<sup>18</sup> The term "Floor Market Maker" is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. See Options 8, Section 2(a)(8).

<sup>19</sup> The term "Floor Lead Market Maker" is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange's trading floor. See Options 8, Section 2(a)(7).

seconds for which that member organization's assigned options series are open for trading.

A member organization may have only one Lead Market Maker badge per option series.

The below example explains how the Exchange aggregates quotes from Lead Market Makers, in their assigned options series, to determine compliance with quoting requirements, which will not be changing pursuant to this proposal. The same calculation applies to quotes from Market Makers in their assigned options series.

Under the proposal, and as is the case today, by way of example, assume Lead Market Maker Firm ABC assigned in five symbols across 2 different badges:

Badge 123 is assigned in symbols QQQ and SPY.

Badge 124 is assigned in symbols IBM, GM, and MSFT.

Quotes submitted through the Specialized Quote Feed interface from the Firm ABC's Lead Market Maker badges from all 5 symbols will be counted in determining compliance with Firm ABC's requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which Firm ABC's assigned options series are open for trading.

If Firm ABC Lead Market Maker badge 123 quotes symbol QQQ at 95% and SPY at 90% and Firm ABC Lead Market Maker badge 124 quotes IBM at 85%, GM at 95%, and MSFT at 90% then Firm ABC will have met requirement to provide two-sided quotations in 90% of the cumulative number of seconds for which Firm ABC's assigned options series are open for trading because the percentage across the 5 symbols is 91%.

#### Implementation

The Exchange proposes to implement this rule change on August 2, 2021. The Exchange has issued an Options Regulatory Alert notifying members and member organizations of this change.<sup>20</sup>

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<sup>20</sup> See Options Regulatory Alert 2021-36.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>22</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by requiring Lead Market Makers and Market Makers to separately meet quoting requirements as both a Lead Market Maker and Market Maker, respectively, when the member organization is assigned in both roles in an options series.

The Exchange's proposal to separately calculate Market Maker and Lead Market Maker quoting obligations where the member organization is assigned as both Lead Market Maker and Market Maker in an options series is consistent with the Act. Specifically, the Exchange's proposal would only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and options series assigned to a Lead Market Maker when calculating whether a member organization acting as a Lead Market Maker has satisfied the requirements to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as Phlx may announce for which that member organization's assigned options series are open for trading. Similarly, the Exchange's proposal would only consider quotes submitted through the Specialized Quote Feed interface utilizing badges and option series assigned to a Market Maker when calculating whether a member organization acting as a Market Maker has satisfied the requirements to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as Phlx may announce for which that member

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<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

organization's assigned options series are open for trading.

The proposed change for calculating the Lead Market Maker requirement separate from the Market Maker requirement, where a member organization is assigned in both roles in an options series, would ensure that the member organization quotes the requisite number of seconds in an assigned options series, when acting as both Lead Market Maker and Market Maker. This would ensure that a member organization adds the requisite amount of liquidity in that assigned options series in exchange for certain benefits offered by the Exchange to the member organization, such as enhanced Lead Market Maker allocation<sup>23</sup> and favorable pricing,<sup>24</sup> in addition to the member organization fulfilling other market making obligations specified in Options 2, Section 5(a).<sup>25</sup>

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<sup>23</sup> See Options 3, Section 10(a)(1)(B).

<sup>24</sup> See Options 7, Pricing Schedule.

<sup>25</sup> In registering as an electronic Market Maker, a member organization commits to various obligations. Transactions of an electronic Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and those member organizations should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Electronic Market Makers should not effect purchases or sales except in a reasonable and orderly manner. Ordinarily during trading hours, an electronic Market Maker must: (1) Maintain a two-sided market in those options in which the electronic Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market. (2) Engage, to a reasonable degree under the existing circumstances, in dealings for its own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of (or demand for) a particular option contract, or a temporary distortion of price relationships between option contracts of the same class. (3) Compete with other electronic Market Makers in all options in all capacities in which the electronic Market Maker is registered to trade. (4) Make markets that will be honored for the number of contracts entered into the System in all options in which the electronic Market Maker is registered to trade. (5) Update quotations in response to changed market conditions in all options in which the electronic Market Maker is registered to trade. (6) Maintain active markets in all options in which the electronic Market Maker is registered. (7) Honor all orders attributed

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. Rather, the proposal would ensure that member organizations that are assigned in an options series as both the Lead Market Maker and Market Maker, respectively, are meeting the same quoting obligations as other member organizations who are assigned solely as either the Lead Market Maker or Market Maker in an option series. Also, this proposal would ensure that a member organization quotes the requisite number of seconds in an assigned options series, when acting as both Lead Market Maker and Market Maker, respectively, thereby adding the requisite amount of liquidity in exchange for certain benefits provided by the Exchange such as enhanced Lead Market Maker allocation<sup>26</sup> and favorable pricing,<sup>27</sup> in addition to fulfilling its other market making obligations specified in Options 2, Section 5(a).<sup>28</sup>

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

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to the electronic Market Maker that the System routes to away markets pursuant to Options 5, Section 4.

<sup>26</sup> See Options 3, Section 10(a)(1)(B).

<sup>27</sup> See Options 7, Pricing Schedule.

<sup>28</sup> See note 25 above.

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 Act<sup>29</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>30</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2021-38 on the subject line.

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<sup>29</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>30</sup> 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.

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-2021-38. 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-2021-38 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.<sup>31</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>31</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined; deleted text is in brackets.*

**NASDAQ PHLX LLC Rules**

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**Options Rules**

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**Options 2 Options Market Participants**

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**Section 5. Electronic Market Maker Obligations and Quoting Requirements**

For purposes of this rule an "electronic Market Maker" shall mean an SQT, RSQT, Lead Market Maker (including Remote Lead Market Maker), Directed SQT and Directed RSQT who enters electronic quotations into the Exchange's System.

(a) In registering as an electronic Market Maker, a member organization commits to various obligations. Transactions of an electronic Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and those member organizations should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Electronic Market Makers should not effect purchases or sales except in a reasonable and orderly manner. Ordinarily during trading hours, an electronic Market Maker must:

- (1) Maintain a two-sided market in those options in which the electronic Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market.
- (2) Engage, to a reasonable degree under the existing circumstances, in dealings for its own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of (or demand for) a particular option contract, or a temporary distortion of price relationships between option contracts of the same class.
- (3) Compete with other electronic Market Makers in all options in all capacities in which the electronic Market Maker is registered to trade.
- (4) Make markets that will be honored for the number of contracts entered into the System in all options in which the electronic Market Maker is registered to trade.

(5) Update quotations in response to changed market conditions in all options in which the electronic Market Maker is registered to trade.

(6) Maintain active markets in all options in which the electronic Market Maker is registered.

(7) Honor all orders attributed to the electronic Market Maker that the System routes to away markets pursuant to Options 5, Section 4.

(b) If Phlx Regulation finds any substantial or continued failure to engage in a course of dealings as specified in paragraph (a) of this section, the electronic Market Maker will be subject to disciplinary action or suspension or revocation of registration in one or more of the securities in which the electronic Market Maker is registered. Nothing in this rule will limit any other power of the Board under these Rules, or procedures of Phlx with respect to the registration of a Market Maker or in respect of any violation by a Market Maker pursuant to this rule.

(c) Electronic Market Makers must enter bids and offers for the options to which it is registered, except in an assigned options series listed intra-day on the Exchange. On a daily basis, an electronic Market Maker must make markets consistent with the applicable quoting requirements specified below. A member organization will be required to meet each market making obligation separately. Quotes submitted through the Specialized Quote Feed interface, utilizing badges and options series assigned to a Lead Market Maker, will be counted toward the requirement to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as Phlx may announce. Quotes submitted through the Specialized Quote Feed interface, utilizing badges and options series assigned to a Market Maker, will be counted toward the requirement to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as Phlx may announce. A member organization that is an [An]SQT [and RSQT] in an options series where the member organization is also assigned as [who is also] the Lead Market Maker in an options series will be held to both the Lead Market Maker and Market Maker obligations, pursuant to Options 2, Section 5(c), separately, in that options series. [in which the Lead Market Maker is assigned and will be held to SQT and RSQT obligations in all other options series where assigned.] An SQT or RSQT who receives a Directed Order shall be held to the standard of a Directed SQT or Directed RSQT, as appropriate.

(1) Size Associated with Quotes. An electronic Market Maker's bid and offer for a series of options contracts shall be accompanied by the number of contracts at that price the electronic Market Maker is willing to buy or sell. The best bid and best offer submitted by an electronic Market Maker must have a size of not less than the minimum number of contracts determined by the Exchange on a class by class basis, which minimum shall be at least one (1) contract.

(2) Two-Sided Quotes. An electronic Market Maker that enters a bid (offer) in a series of an option in which he is registered on Phlx must enter an offer (bid). These quotations must meet the legal quote width requirements specified in Options 2, Section 4(c).

(A) SQTs and RSQTs, associated with the same member organization, are collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or

such higher percentage as Phlx may announce in advance, for which that member organization's assigned options series are open for trading. Notwithstanding the foregoing, a member organization shall not be required to make two-sided markets pursuant to this paragraph (c)(2) above in any Quarterly Option Series, any adjusted option series, and any option series with an expiration of nine months or greater.

(i) An adjusted option series is defined as an option series wherein one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares ("Adjusted Options Series").

(B) Lead Market Makers (including Remote Lead Market Makers), associated with the same member organization, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as Phlx may announce in advance, for which that member organization's assigned options series are open for trading. Lead Market Makers shall be required to make two-sided markets pursuant to this rule in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater.

(C) Directed SQTs and Directed RSQTs, associated with the same member organization, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as Phlx may announce in advance, for which that member organization's assigned options series are open for trading. A member organization shall be considered directed in all assigned options once the member organization receives a Directed Order in any option in which they are assigned and shall be considered a Directed SQT or Directed RSQT until such time as the member organization notifies the Exchange that they are no longer directed. Notwithstanding the foregoing, a member organization shall not be required to make two-sided markets pursuant to this paragraph (c)(2) above in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater.

(D) Specifically, the Exchange will calculate subparagraphs (A) - (C) above by (i) taking the total number of seconds the member organization disseminates quotes in each assigned options series, excluding Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for SQTs, RSQTs, Directed SQTs and Directed RSQTs; and (ii) dividing that time by the eligible total number of seconds each assigned option series is open for trading that day. Quoting is not required in every assigned options series. Compliance with this requirement is determined by reviewing the aggregate of quoting in assigned options series for the member organization.

(3) Phlx Regulation may consider exceptions to the above-referenced requirement to quote based on demonstrated legal or regulatory requirements or other mitigating circumstances. For purposes of the Exchange's surveillance of member organization compliance with this rule, the Exchange may determine compliance on a monthly basis. The Exchange's monthly compliance evaluation of the quoting requirement does not relieve a member organization of the obligation to provide two-sided quotes on a daily basis, nor will it prohibit the

Exchange from taking disciplinary action against a member organization for failing to meet the quoting obligation each trading day.

(4) If a technical failure or limitation of a System of Phlx prevents a member organization from maintaining, or prevents a member organization from communicating to Phlx timely and accurate quotes, the duration of such failure or limitation shall not be included in any of the calculations under paragraph (c)(2) above with respect to the affected quotes.

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