

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 39	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2021 - * 40	Amendment No. (req. for Amendments *)
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Filing by Nasdaq PHLX LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input 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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

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

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

A proposal to amend Equity 4, Rules 3301A and 3301B in light of planned changes to the System.

Contact Information

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

First Name * Brett Last Name * Kitt

Title * Principal Associate General Counsel

E-mail * Brett.Kitt@nasdaq.com

Telephone * (301) 978-8132 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 07/02/2021 EVP and Chief Legal Counsel

By John Zecca

(Name *)

john.zecca@nasdaq.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Add Remove View

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

Partial Amendment

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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 amend Equity 4, Rules 3301A and 3301B³ in light of planned changes to the System, as described further below.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors 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:

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ References herein to PHLX Rules in the 3000 Series shall mean Rules in PHLX Equity 4.

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

a. Purpose

Presently, the Exchange is making functional enhancements and improvements to specific Order Attributes⁴ that are currently only available via the RASH Order entry protocol.⁵ Specifically, the Exchange will be upgrading the logic and implementation of these Order Types and Order Attributes so that the features are more streamlined across the Exchange Systems and order entry protocols, and will enable the Exchange to process these Orders more quickly and efficiently. Additionally, this System upgrade will pave the way for the Exchange to enhance the OUCH Order entry protocol⁶ so that Participants may enter such Order Types and Order Attributes via OUCH, in addition to

⁴ An “Order Attribute” is a set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. See Equity 1, Section 1(b)(7).

⁵ The RASH (Routing and Special Handling) Order entry protocol is a proprietary protocol that allows members to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing. See http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf.

⁶ The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. See <https://www.nasdaqtrader.com/Trader.aspx?id=OUCH>.

the RASH Order entry protocols.⁷ The Exchange plans to implement its enhancement of the OUCH protocol sequentially, by Order Type and Order Attribute.⁸

To support and prepare for these upgrades and enhancements, the Exchange recently submitted two rule filings to the Commission that amended its rules pertaining to, among other things, Market Maker Peg Orders and Orders with Reserve Size.⁹ The Exchange now proposes to further amend its Rules governing Order Attributes, at Rule 3301B. In particular, the Exchange proposes to adjust the current functionality of the Pegging¹⁰ and Trade Now Attributes,¹¹ as described below, so that they align with how the System, once upgraded, will handle these Order Attributes going forward. The Exchange also proposes to amend the Midpoint Peg Post-Only Order Type, at Rule 3301A, to accommodate changes to the Trade Now Attribute.

⁷ The Exchange designed the OUCH protocol to enable members to enter Orders quickly into the System. As such, the Exchange developed OUCH with simplicity in mind, and it therefore lacks more complex order handling capabilities. By contrast, the Exchange specifically designed RASH to support advanced functionality, including discretion, random reserve, pegging and routing. Once the System upgrades occur, then the Exchange intends to propose further changes to its Rules to permit participants to utilize OUCH, in addition to RASH, to enter order types that require advanced functionality.

⁸ The Exchange notes that its sister exchange, The Nasdaq Stock Market, LLC (“Nasdaq”), has already filed similar proposed rule changes with the Commission. See Securities Exchange Act Release No. 34-92180 (June 15, 2021), 86 FR 33420 (June 24, 2021) (SR-NASDAQ-2021-044).

⁹ See Securities Exchange Act Release No. 34-91263 (March 5, 2021), 86 FR 13950 (March 11, 2021) (SR-Phlx-2021-11); Securities Exchange Act Release No. 34-90558 (December 3, 2020), 85 FR 79231 (December 9, 2020) (SR-Phlx-2020-51).

¹⁰ See Rule 3301B(d).

¹¹ See Rule 3301B(l).

Changes to Pegging Order Attribute

First, the Exchange proposes to amend Rule 3301B(d), which governs the Pegging Order Attribute. The Exchange offers three types of Pegging: Primary Pegging, Market Pegging, and Midpoint Pegging.¹² The Rule presently provides that if, at the time of entry, there is no price to which a Pegged Order can be pegged, the Order will be rejected, provided, however, that a Displayed Order that has Market Pegging, or an Order with a Non-Display Attribute that has Primary Pegging or Market Pegging, will be accepted at its limit price. The Exchange proposes to replace this text by stating that if, at the time of entry, there is no price to which a Pegged Order, that has not been assigned a Routing Order Attribute, can be pegged or pegging would lead to a price at which the Order cannot be posted, then the Order will not be immediately available on the Exchange Book and will be entered once there is a permissible price.¹³ The Exchange proposes this change so as to enhance the manner in which the Exchange presently handles Pegged Orders in this scenario. Rather than reject such Orders outright, and require customers to continuously reenter the Orders thereafter until a pegging price

¹² See Rule 3301B(d) (defining “Primary Pegging” as pegging with reference to the inside quotation on the same side of the market, “Market Pegging” as pegging with reference to the inside quotation on the opposite side of the market, and “Midpoint Pegging” as pegging with reference to the midpoint between the inside bid and the inside offer).

¹³ This change is applicable to Primary, Market and Midpoint Pegging Orders entered via RASH/FIX; OUCH/FLITE Midpoint Pegging behavior is not affected by this change. The Exchange also proposes to amend existing language in this provision which states that “if the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Order will not be accepted.” The proposed amendment would specify that this language applies only to Orders with Midpoint Pegging entered through OUCH or FLITE. The proposed changes to pegged orders entered through RASH or FIX will allow the Exchange to handle the Order more consistent with the customer intended instruction, and are necessary to facilitate forthcoming System enhancements.

emerges, which may cost them queue priority, the Exchange believes that it would be more efficient and customer-friendly to simply hold a Pegged Order until a permissible pegging price emerges.¹⁴

A similar rationale applies to the Exchange's proposal to cease accepting certain Market or Primary Pegged Orders at their limit prices if no pegging price is available. Because participants presumably prefer for their orders to post at the pegging price, the Exchange believes that participants would prefer for the Exchange to hold such orders until a permissible pegging price emerges, rather than post the orders at their limit prices.

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¹⁴ Meanwhile, the Exchange proposes to amend the Rule to state that if a Pegged Order is assigned a Routing Order Attribute, and a permissible pegging price is not available upon entry, then the Order will continue to be rejected. The Exchange proposes to retain existing practice for Pegged Orders with Routing Order Attributes because the Exchange is not yet prepared to make similar changes to such Orders, although it contemplates doing so in the near future.

¹⁵ When a Pegged Order lacks a pegging price or a permissible pegging price, the System will not wait indefinitely for a pegging price or a permissible pegging price to become available. Instead, the System will cancel the Order if no permissible pegging price becomes available within one second after Order entry or after the Order was removed due to the lack of a permissible pegging price and no longer available on the Book. The Exchange may, in the exercise of its discretion, modify the length of this maximum time period by posting advance notice of the applicable new time period on its website.

¹⁶ In this paragraph of Rule 3301B(d), the Exchange again proposes to state that it will continue to reject a Pegged Order entered through RASH or FIX when a permissible pegging price is unavailable, if the Pegged Order is assigned a Routing Order Attribute. The Exchange will continue to accept certain Market and Primary Pegged Orders at their limit price where they have Routing Order Attributes. The Exchange proposes to retain existing practice for Pegged Orders with Routing Order Attributes because the Exchange is not yet prepared to make similar changes to such Orders, although it contemplates doing so in the near future.

The Exchange proposes similar changes to the paragraph of Rule 3301B(d) that applies to Pegged Orders entered through RASH or FIX that posted to the Exchange Book. The text presently provides that if the price to which an Order is pegged is not available, the Order will be rejected. The Exchange proposes instead to state that if the price to which an Order is pegged becomes unavailable or pegging would lead to a price at which the Order cannot be posted,¹⁷ then the Exchange will remove the Order from the Exchange Book and re-enter it once there is a permissible price. Again, the Exchange proposes this change to enhance and make the System more efficient by providing for the Exchange to re-post the Pegged Orders rather than rejecting them when there is no permissible pegging price and requiring participants to re-enter them once a valid price becomes available.¹⁸ The Exchange notes that the proposed change will not apply to Pegged Orders with Routing Attributes assigned to them; the existing Rule functionality will continue to apply to those Orders.

¹⁷ An example of a scenario where pegging would lead to a price at which an Order cannot be posted is as follows. Assume that the NBBO is \$0.0002 x \$0.0003. A Primary Pegged Order to buy is entered with a passive offset amount of \$0.0003. This would result in the Order being made unavailable by the Exchange as - \$0.0001 is not a permissible price. Currently, the Exchange accepts such Orders at its limit price, and will post the Orders to the Exchange Book in accordance with the parameters that apply to the underlying Order Type.

¹⁸ The Exchange proposes to apply a similar time limitation to the holding period prescribed above. Similarly, for an Order with Midpoint Pegging, if the Inside Bid and Inside Offer become crossed, or there is no Inside Bid or Inside Offer, the System will cancel the Order if no permissible price becomes available within one second after the Order was removed and no longer available on the Exchange Book (the Exchange may, in the exercise of its discretion modify the length of this one second time period by posting advance notice of the applicable time period on its website). For an Order with Midpoint Pegging with a Routing Attribute, the new one second time period will be applicable.

Rule 3301B(d) also subjects Pegging Orders to collars, meaning that any portion of a Pegging Order that would¹⁹ execute, either on the Exchange or when routed to another market center, at a price of more than \$0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled. Although the Rule states that it applies this collar to Orders with Primary and Market Pegging, the Exchange has always intended for the collar to also apply to Orders with Midpoint Pegging, and in practice, it does so. The failure of the Rule to reflect the application of the collar to Midpoint Pegged Orders was an unintended omission. The Exchange now proposes to revise Rule 3301B(d) to correct this omission.

Changes to the Trade Now Order Attribute

Additionally, the Exchange proposes to amend its rules governing the Trade Now Attribute, at Rule 3301B(l). Pursuant to Rule 3301B(l), Trade Now is an Order Attribute that allows a resting Order that becomes locked by an incoming Displayed Order to execute against a locking or crossing Order as a liquidity taker. The Exchange proposes to amend Trade Now in several respects.

First, the Exchange proposes to incorporate so-called “Midpoint Trade Now” functionality into the Trade Now Attribute, similar what Nasdaq did in a recent

¹⁹ Additionally, the Exchange proposes to replace the word “would” with “could” in this provision, so as to clarify that collars apply in circumstances in which Pegged Orders might execute, but do not necessarily do so. An example of a circumstance in which such Orders do not execute is as follows. Assume that the NBBO is \$10.00 x \$10.01. A Market Pegged Order to buy posts at \$10.01. The NBBO then updates to \$10.00 x \$11.00. Because re-pricing and posting the Market Pegged Order would result in the Order being available on the Book and executable at \$11.00 (outside of the collars), the Order will be canceled.

corresponding rule filing.²⁰ This functionality would allow a resting Order that becomes locked at its non-displayed price by an incoming Midpoint Peg Post-Only Order to execute against a locking or crossing Order as a liquidity taker. This functionality will allow market participants to have their Orders executed as a taker of liquidity should that Order become locked at its non-displayed price by a contra-side incoming Midpoint Peg Post-Only Order. This functionality will therefore promote an efficient and orderly market by allowing Orders in this scenario to execute and resolve a locked market. Similarly, allowing a subsequent Order to execute against a locking Midpoint Peg Post-Only Order if the resting Order that is locked by the Midpoint Peg Post-Only Order has not enabled the Trade Now functionality will also promote an efficient and orderly market by allowing the incoming Order in that scenario to execute and resolve an instance where Orders with a non-displayed price on both the buy and sell side of the market are priced equally but not executing against each other.

Next, the Exchange proposes to amend Rule 3301B(l) by streamlining and simplifying the instructions that participants must enter to address the handling of their orders in various locking or crossing scenarios.²¹ Specifically, rather than require a participant to manually send a Trade Now instruction whenever an Order entered through

²⁰ See Securities Exchange Act Release No. 34-92180 (June 15, 2021), 86 FR 33420 (June 24, 2021) (SR-NASDAQ-2021-044). The Exchange notes that prior to SR-NASDAQ-2021-044, Midpoint Trade Now was a distinct Order Attribute in the Nasdaq rulebook, first introduced in 2018. See Securities Exchange Act Release No. 34-84621 (November 19, 2018), 83 FR 60514 (November 26, 2018) (SR-NASDAQ-2018-090). SR-NASDAQ-2021-044 incorporated Midpoint Trade Now into Trade Now.

²¹ An example of a crossing scenario is as follows. A non-displayed Order to buy rests on the Book at \$0.9995. Thereafter, a Post Only Order to sell is entered at \$0.9994, which would post on the Book and display at \$0.9994, thereby crossing the non-displayed Order as the price improvement requirements were not met.

OUCH or FLITE becomes locked, the proposed amended Rule will allow for a participant to enable Trade Now functionality on a port-level basis for all Order entry protocols and for all Order Types that support Trade Now, as well as on an order-by-order basis, for the Non-Displayed Order Type, when entered through OUCH or FLITE.²² For Orders entered through RASH or FIX, Trade Now will be available on an order-by-order basis for all Order Types that support Trade Now. The proposal will not extend Trade Now functionality to new Order Types.²³ However, the Exchange notes that it proposes conforming changes to the Midpoint Peg Post-Only Order Type, at Rule 3301A, which already includes Trade Now, to accommodate the adoption of Midpoint Trade Now functionality.

The Exchange intends to implement the foregoing changes during the Third Quarter of 2021. The Exchange will issue an Equity Trader Alert at least 7 days in advance of implementing the changes.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁵ in particular,

²² This proposed change in functionality for OUCH and FLITE is enabled by the migration of Trade Now to the Exchange's matching System.

²³ The Exchange proposes to add language to Rule 3301B(1) to state that Trade Now allows a resting Order that becomes locked "or crossed, as applicable at its non-displayed price" by the "posted price" of an incoming Displayed Order to execute against a locking or crossing Order(s) automatically. The Exchange proposes to add the phrase "or crossed, as applicable," for completeness. It also proposes to add the phrases "at its non-displayed price" and "posted price" for purposes of clarity. They merely communicate that the incoming Displayed Order or Midpoint Peg Post-Only Order first posts to the Exchange Book, thereby locking or crossing the resting Order at its non-displayed price.

²⁴ 15 U.S.C. 78f(b).

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.

The Exchange believes that its proposed amendments to the Pegging Order Attribute, at Rule 3301B(d), are consistent with the Act. The proposals to eliminate the functionality that provides for the System to reject certain Pegged Orders that lack a permissible pegging price, or to post the Orders at their limit price, are consistent with the Act because they eliminate unwarranted inefficiencies that arise when participants must repeatedly re-enter rejected Pegged Orders until a permissible price becomes available.²⁶

²⁷ It is also consistent with the Act to maintain the existing practice in the Rule of rejecting a Pegged Order without a permissible pegging price where the Order has been

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ The Exchange notes that as part of this proposed change, if there is no Pegging Price upon entry for a Displayed Order that has Market Pegging, or an Order with a Non-Display Attribute that has Primary Pegging or Market Pegging, then it will no longer accept such Orders at their limit price. The Exchange believes that this proposed change is consistent with the Act because it better aligns with customer intentions for Pegged Orders to post at a Pegging Price. That is, the Exchange believes that participants prefer for Pegged Orders to be entered at a Pegging Price, rather than its entered limit price, even if that means that the Order must wait for a Pegging Price to become available. As discussed above, the Exchange does not propose this change for Pegged Orders with Routing Attributes.

²⁷ It is also consistent with the Act to limit the time period for which the Exchange will hold, without canceling, Pegged Orders for which there is no pegging price or permissible pegging price because the Exchange does not believe that customers would want the Exchange to hold their orders indefinitely. Moreover, holding such orders indefinitely would encumber the Exchange's System. The Exchange believes that a one second holding period for such orders is long enough to provide the above-stated efficiencies for participants, but not too long as to encumber them. However, the Exchange believes that it is reasonable to reserve discretion to alter the holding period, from time to time, should it determine that doing so better meets the needs of customers or its System resources.

assigned a Routing Attribute. The Exchange is not yet prepared to hold such Orders in the same way that it proposes to do so for Pegged Orders without Routing Attributes, although it contemplates doing so in the near future.

Moreover, the proposal to amend Rule 3301B(d) to state expressly that Midpoint Pegging Orders are subject to price collars, like Orders with Primary and Market Pegging, will correct an unintended omission and ensure that the Rule is consistent with existing Exchange practice and with customer expectations. The application of these collars will prevent Pegged Orders from having prices that deviate too far away from where the security was trading when the Order was first entered.²⁸

The Exchange's proposals to amend its rules governing the Trade Now Attribute, at Rule 3301B(l), is consistent with the Act. First, it is consistent with the Act to add to Trade Now so-called "Midpoint Trade Now" functionality, which presently exists on Nasdaq. This functionality will allow market participants to have their Orders executed as a taker of liquidity should that Order become locked at its non-displayed price by a contra-side Midpoint Peg Post-Only Order. This functionality will therefore promote an efficient and orderly market by allowing Orders in this scenario to execute and resolve a locked market. Similarly, allowing a subsequent Order to execute against a locking Midpoint Peg Post-Only Order if the resting Order that is locked by the Midpoint Peg Post-Only Order has not enabled the Trade Now functionality will also promote an efficient and orderly market by allowing the incoming Order in that scenario to execute

²⁸ Additionally, the Exchange believes that it is consistent with the Act to replace the word "would" with "could" in this provision, because doing so would clarify that collars apply in circumstances in which Pegged Orders might execute, but do not necessarily do so. See supra, n.19.

and resolve an instance where Orders with a non-displayed price on both the buy and sell side of the market are priced equally but not executing against each other.

The proposed amendments to Trade Now will also streamline and simplify the instructions that participants must enter to address the handling of their orders in various locking or crossing scenarios. Rather than require a participant to manually send a Trade Now instruction whenever an Order entered through OUCH or FLITE becomes locked, the proposed amended Rule will allow for a participant to enable Trade Now functionality on a port-level basis for all Order entry protocols and for all Order Types that support Trade Now, as well as on an order-by-order basis, for the Non-Displayed Order Type, when entered through OUCH and FLITE.²⁹ Furthermore, it is consistent with the Act to add language to Rule 3301B(l) to state that Trade Now allows a resting Order that becomes locked “or crossed, as applicable, at its non-displayed price” by the “posted price” of an incoming Displayed Order to execute against a locking or crossing Order(s) automatically. The Exchange proposes to add the phrase “or crossed, as applicable,” for completeness. The Exchange also proposes to add the phrases “at its non-displayed price” and for purposes of clarity. They merely communicate that the incoming Displayed Order or Midpoint Peg Post-Only Order first posts to the Exchange Book, thereby locking or crossing the resting Order at its non-displayed price.

Finally, the Exchange believes that it is consistent with the Act to make conforming changes to the Midpoint Peg Post-Only Order Type, at Rule 3301A, which already includes Trade Now, to accommodate the adoption of Midpoint Trade Now functionality.

²⁹ As noted above, for Orders entered through RASH or FIX, Trade Now will be available on an order-by-order basis for all Order Types that support Trade Now.

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. As a general principle, the proposed changes are reflective of the significant competition among exchanges and non-exchange venues for order flow. In this regard, proposed changes that facilitate enhancements to the Exchange's System and order entry protocols as well as those that amend and clarify the Exchange's Rules regarding its Order Attributes, are pro-competitive because they bolster the efficiency, integrity, and overall attractiveness of the Exchange in an absolute sense and relative to its peers.

Moreover, none of the proposed changes will unduly burden intra-market competition among various Exchange participants. Participants will experience no competitive impact from its proposals to hold (up to one second), rather than reject (or accept at their limit price), Pegging Orders (other than those with Routing Attributes) in circumstances in which no permissible pegging price is available, as these proposals will merely eliminate unwarranted inefficiencies that ensue from the System requiring participants to repeatedly re-enter Pegged Orders until a price becomes available, or the System posting Pegged Orders at their limit prices, if there is no pegging price.

Moreover, the proposal to amend Rule 3301B(d) to state expressly that Midpoint Pegging Orders are subject to price collars, like Orders with Primary and Market Pegging, will have no competitive impact as the proposal is consistent with existing Exchange practice and with customer expectations.

The Exchange's proposals to amend its rules governing Trade Now will have no adverse competitive impact on participants. The proposed addition of Midpoint Trade Now functionality will expand the Exchange's capabilities relative to competitors,

thereby rendering it a more attractive trading venue. Moreover, this new functionality is optional for participants to employ. Meanwhile, the other proposed changes to Rule 3301B(l) will render the Trade Now Order Attribute more efficient and easier for participants to utilize. The proposed conforming changes to the Midpoint Peg Post-Only Order Type, at Rule 3301A, will merely accommodate the adoption of Midpoint Trade Now functionality.

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)³⁰ of the Act and Rule 19b-4(f)(6) thereunder³¹ 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 proposed changes do not significantly affect the protection of investors or the public interest; instead, they will further the interests of investors and the public by,

³⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

³¹ 17 CFR 240.19b-4(f)(6).

among other things: (i) aligning the functionality of the Pegging Order Attributes with customer expectations; (ii) by eliminating Pegging Order inefficiencies that cost participants queue priority;³² and (iii) expanding and streamlining the functionality and efficiency of the Trade Now Order Attribute. Moreover, the proposed changes will not impose any significant or undue burden on competition to the extent that they serve these purposes. As discussed above, the proposal to add Midpoint Trade Now functionality to Trade Now also will not burden competition because the functionality is optional for investors and already is offered by Nasdaq.

Furthermore, Rule 19b-4(f)(6)(iii)³³ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits

³² As discussed above, the existing Rule functionality will continue to apply to Pegging Orders with Routing Attributes assigned to them.

³³ 17 CFR 240.19b-4(f)(6)(iii).

the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

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

This rule filing is based upon SR-NASDAQ-2021-044, except that it excludes aspects of that filing that are inapplicable to the Exchange, including changes to rules governing order types that do not exist on the Exchange.

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-2021-40)

July __, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Equity 4, Rules 3301A and 3301B

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 July 2, 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 Equity 4, Rule 3301B, as described further below.

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

¹ 15 U.S.C. 78s(b)(1).

² 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

Presently, the Exchange is making functional enhancements and improvements to specific Order Attributes³ that are currently only available via the RASH Order entry protocol.⁴ Specifically, the Exchange will be upgrading the logic and implementation of these Order Types and Order Attributes so that the features are more streamlined across the Exchange Systems and order entry protocols, and will enable the Exchange to process these Orders more quickly and efficiently. Additionally, this System upgrade will pave the way for the Exchange to enhance the OUCH Order entry protocol⁵ so that Participants may enter such Order Types and Order Attributes via OUCH, in addition to

³ An "Order Attribute" is a set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. See Equity 1, Section 1(b)(7).

⁴ The RASH (Routing and Special Handling) Order entry protocol is a proprietary protocol that allows members to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing. See http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf.

⁵ The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. See <https://www.nasdaqtrader.com/Trader.aspx?id=OUCH>.

the RASH Order entry protocols.⁶ The Exchange plans to implement its enhancement of the OUCH protocol sequentially, by Order Type and Order Attribute.⁷

To support and prepare for these upgrades and enhancements, the Exchange recently submitted two rule filings to the Commission that amended its rules pertaining to, among other things, Market Maker Peg Orders and Orders with Reserve Size.⁸ The Exchange now proposes to further amend its Rules governing Order Attributes, at Rule 3301B. In particular, the Exchange proposes to adjust the current functionality of the Pegging⁹ and Trade Now Attributes,¹⁰ as described below, so that they align with how the System, once upgraded, will handle these Order Attributes going forward. The Exchange also proposes to amend the Midpoint Peg Post-Only Order Type, at Rule 3301A, to accommodate changes to the Trade Now Attribute.

⁶ The Exchange designed the OUCH protocol to enable members to enter Orders quickly into the System. As such, the Exchange developed OUCH with simplicity in mind, and it therefore lacks more complex order handling capabilities. By contrast, the Exchange specifically designed RASH to support advanced functionality, including discretion, random reserve, pegging and routing. Once the System upgrades occur, then the Exchange intends to propose further changes to its Rules to permit participants to utilize OUCH, in addition to RASH, to enter order types that require advanced functionality.

⁷ The Exchange notes that its sister exchange, The Nasdaq Stock Market, LLC (“Nasdaq”), has already filed similar proposed rule changes with the Commission. See Securities Exchange Act Release No. 34-92180 (June 15, 2021), 86 FR 33420 (June 24, 2021) (SR-NASDAQ-2021-044).

⁸ See Securities Exchange Act Release No. 34-91263 (March 5, 2021), 86 FR 13950 (March 11, 2021) (SR-Phlx-2021-11); Securities Exchange Act Release No. 34-90558 (December 3, 2020), 85 FR 79231 (December 9, 2020) (SR-Phlx-2020-51).

⁹ See Rule 3301B(d).

¹⁰ See Rule 3301B(l).

Changes to Pegging Order Attribute

First, the Exchange proposes to amend Rule 3301B(d), which governs the Pegging Order Attribute. The Exchange offers three types of Pegging: Primary Pegging, Market Pegging, and Midpoint Pegging.¹¹ The Rule presently provides that if, at the time of entry, there is no price to which a Pegged Order can be pegged, the Order will be rejected, provided, however, that a Displayed Order that has Market Pegging, or an Order with a Non-Display Attribute that has Primary Pegging or Market Pegging, will be accepted at its limit price. The Exchange proposes to replace this text by stating that if, at the time of entry, there is no price to which a Pegged Order, that has not been assigned a Routing Order Attribute, can be pegged or pegging would lead to a price at which the Order cannot be posted, then the Order will not be immediately available on the Exchange Book and will be entered once there is a permissible price.¹² The Exchange proposes this change so as to enhance the manner in which the Exchange presently handles Pegged Orders in this scenario. Rather than reject such Orders outright, and require customers to continuously reenter the Orders thereafter until a pegging price

¹¹ See Rule 3301B(d) (defining “Primary Pegging” as pegging with reference to the inside quotation on the same side of the market, “Market Pegging” as pegging with reference to the inside quotation on the opposite side of the market, and “Midpoint Pegging” as pegging with reference to the midpoint between the inside bid and the inside offer).

¹² This change is applicable to Primary, Market and Midpoint Pegging Orders entered via RASH/FIX; OUCH/FLITE Midpoint Pegging behavior is not affected by this change. The Exchange also proposes to amend existing language in this provision which states that “if the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Order will not be accepted.” The proposed amendment would specify that this language applies only to Orders with Midpoint Pegging entered through OUCH or FLITE. The proposed changes to pegged orders entered through RASH or FIX will allow the Exchange to handle the Order more consistent with the customer intended instruction, and are necessary to facilitate forthcoming System enhancements.

emerges, which may cost them queue priority, the Exchange believes that it would be more efficient and customer-friendly to simply hold a Pegged Order until a permissible pegging price emerges.¹³

A similar rationale applies to the Exchange's proposal to cease accepting certain Market or Primary Pegged Orders at their limit prices if no pegging price is available. Because participants presumably prefer for their orders to post at the pegging price, the Exchange believes that participants would prefer for the Exchange to hold such orders until a permissible pegging price emerges, rather than post the orders at their limit prices.

14, 15

¹³ Meanwhile, the Exchange proposes to amend the Rule to state that if a Pegged Order is assigned a Routing Order Attribute, and a permissible pegging price is not available upon entry, then the Order will continue to be rejected. The Exchange proposes to retain existing practice for Pegged Orders with Routing Order Attributes because the Exchange is not yet prepared to make similar changes to such Orders, although it contemplates doing so in the near future.

¹⁴ When a Pegged Order lacks a pegging price or a permissible pegging price, the System will not wait indefinitely for a pegging price or a permissible pegging price to become available. Instead, the System will cancel the Order if no permissible pegging price becomes available within one second after Order entry or after the Order was removed due to the lack of a permissible pegging price and no longer available on the Book. The Exchange may, in the exercise of its discretion, modify the length of this maximum time period by posting advance notice of the applicable new time period on its website.

¹⁵ In this paragraph of Rule 3301B(d), the Exchange again proposes to state that it will continue to reject a Pegged Order entered through RASH or FIX when a permissible pegging price is unavailable, if the Pegged Order is assigned a Routing Order Attribute. The Exchange will continue to accept certain Market and Primary Pegged Orders at their limit price where they have Routing Order Attributes. The Exchange proposes to retain existing practice for Pegged Orders with Routing Order Attributes because the Exchange is not yet prepared to make similar changes to such Orders, although it contemplates doing so in the near future.

The Exchange proposes similar changes to the paragraph of Rule 3301B(d) that applies to Pegged Orders entered through RASH or FIX that posted to the Exchange Book. The text presently provides that if the price to which an Order is pegged is not available, the Order will be rejected. The Exchange proposes instead to state that if the price to which an Order is pegged becomes unavailable or pegging would lead to a price at which the Order cannot be posted,¹⁶ then the Exchange will remove the Order from the Exchange Book and re-enter it once there is a permissible price. Again, the Exchange proposes this change to enhance and make the System more efficient by providing for the Exchange to re-post the Pegged Orders rather than rejecting them when there is no permissible pegging price and requiring participants to re-enter them once a valid price becomes available.¹⁷ The Exchange notes that the proposed change will not apply to Pegged Orders with Routing Attributes assigned to them; the existing Rule functionality will continue to apply to those Orders.

¹⁶ An example of a scenario where pegging would lead to a price at which an Order cannot be posted is as follows. Assume that the NBBO is \$0.0002 x \$0.0003. A Primary Pegged Order to buy is entered with a passive offset amount of \$0.0003. This would result in the Order being made unavailable by the Exchange as - \$0.0001 is not a permissible price. Currently, the Exchange accepts such Orders at its limit price, and will post the Orders to the Exchange Book in accordance with the parameters that apply to the underlying Order Type.

¹⁷ The Exchange proposes to apply a similar time limitation to the holding period prescribed above. Similarly, for an Order with Midpoint Pegging, if the Inside Bid and Inside Offer become crossed, or there is no Inside Bid or Inside Offer, the System will cancel the Order if no permissible price becomes available within one second after the Order was removed and no longer available on the Exchange Book (the Exchange may, in the exercise of its discretion modify the length of this one second time period by posting advance notice of the applicable time period on its website). For an Order with Midpoint Pegging with a Routing Attribute, the new one second time period will be applicable.

Rule 3301B(d) also subjects Pegging Orders to collars, meaning that any portion of a Pegging Order that would¹⁸ execute, either on the Exchange or when routed to another market center, at a price of more than \$0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled. Although the Rule states that it applies this collar to Orders with Primary and Market Pegging, the Exchange has always intended for the collar to also apply to Orders with Midpoint Pegging, and in practice, it does so. The failure of the Rule to reflect the application of the collar to Midpoint Pegged Orders was an unintended omission. The Exchange now proposes to revise Rule 3301B(d) to correct this omission.

Changes to the Trade Now Order Attribute

Additionally, the Exchange proposes to amend its rules governing the Trade Now Attribute, at Rule 3301B(l). Pursuant to Rule 3301B(l), Trade Now is an Order Attribute that allows a resting Order that becomes locked by an incoming Displayed Order to execute against a locking or crossing Order as a liquidity taker. The Exchange proposes to amend Trade Now in several respects.

First, the Exchange proposes to incorporate so-called “Midpoint Trade Now” functionality into the Trade Now Attribute, similar what Nasdaq did in a recent

¹⁸ Additionally, the Exchange proposes to replace the word “would” with “could” in this provision, so as to clarify that collars apply in circumstances in which Pegged Orders might execute, but do not necessarily do so. An example of a circumstance in which such Orders do not execute is as follows. Assume that the NBBO is \$10.00 x \$10.01. A Market Pegged Order to buy posts at \$10.01. The NBBO then updates to \$10.00 x \$11.00. Because re-pricing and posting the Market Pegged Order would result in the Order being available on the Book and executable at \$11.00 (outside of the collars), the Order will be canceled.

corresponding rule filing.¹⁹ This functionality would allow a resting Order that becomes locked at its non-displayed price by an incoming Midpoint Peg Post-Only Order to execute against a locking or crossing Order as a liquidity taker. This functionality will allow market participants to have their Orders executed as a taker of liquidity should that Order become locked at its non-displayed price by a contra-side incoming Midpoint Peg Post-Only Order. This functionality will therefore promote an efficient and orderly market by allowing Orders in this scenario to execute and resolve a locked market. Similarly, allowing a subsequent Order to execute against a locking Midpoint Peg Post-Only Order if the resting Order that is locked by the Midpoint Peg Post-Only Order has not enabled the Trade Now functionality will also promote an efficient and orderly market by allowing the incoming Order in that scenario to execute and resolve an instance where Orders with a non-displayed price on both the buy and sell side of the market are priced equally but not executing against each other.

Next, the Exchange proposes to amend Rule 3301B(l) by streamlining and simplifying the instructions that participants must enter to address the handling of their orders in various locking or crossing scenarios.²⁰ Specifically, rather than require a participant to manually send a Trade Now instruction whenever an Order entered through

¹⁹ See Securities Exchange Act Release No. 34-92180 (June 15, 2021), 86 FR 33420 (June 24, 2021) (SR-NASDAQ-2021-044). The Exchange notes that prior to SR-NASDAQ-2021-044, Midpoint Trade Now was a distinct Order Attribute in the Nasdaq rulebook, first introduced in 2018. See Securities Exchange Act Release No. 34-84621 (November 19, 2018), 83 FR 60514 (November 26, 2018) (SR-NASDAQ-2018-090). SR-NASDAQ-2021-044 incorporated Midpoint Trade Now into Trade Now.

²⁰ An example of a crossing scenario is as follows. A non-displayed Order to buy rests on the Book at \$0.9995. Thereafter, a Post Only Order to sell is entered at \$0.9994, which would post on the Book and display at \$0.9994, thereby crossing the non-displayed Order as the price improvement requirements were not met.

OUCH or FLITE becomes locked, the proposed amended Rule will allow for a participant to enable Trade Now functionality on a port-level basis for all Order entry protocols and for all Order Types that support Trade Now, as well as on an order-by-order basis, for the Non-Displayed Order Type, when entered through OUCH or FLITE.²¹ For Orders entered through RASH or FIX, Trade Now will be available on an order-by-order basis for all Order Types that support Trade Now. The proposal will not extend Trade Now functionality to new Order Types.²² However, the Exchange notes that it proposes conforming changes to the Midpoint Peg Post-Only Order Type, at Rule 3301A, which already includes Trade Now, to accommodate the adoption of Midpoint Trade Now functionality.

The Exchange intends to implement the foregoing changes during the Third Quarter of 2021. The Exchange will issue an Equity Trader Alert at least 7 days in advance of implementing the changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁴ in particular,

²¹ This proposed change in functionality for OUCH and FLITE is enabled by the migration of Trade Now to the Exchange's matching System.

²² The Exchange proposes to add language to Rule 3301B(1) to state that Trade Now allows a resting Order that becomes locked "or crossed, as applicable at its non-displayed price" by the "posted price" of an incoming Displayed Order to execute against a locking or crossing Order(s) automatically. The Exchange proposes to add the phrase "or crossed, as applicable," for completeness. It also proposes to add the phrases "at its non-displayed price" and "posted price" for purposes of clarity. They merely communicate that the incoming Displayed Order or Midpoint Peg Post-Only Order first posts to the Exchange Book, thereby locking or crossing the resting Order at its non-displayed price.

²³ 15 U.S.C. 78f(b).

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.

The Exchange believes that its proposed amendments to the Pegging Order Attribute, at Rule 3301B(d), are consistent with the Act. The proposals to eliminate the functionality that provides for the System to reject certain Pegged Orders that lack a permissible pegging price, or to post the Orders at their limit price, are consistent with the Act because they eliminate unwarranted inefficiencies that arise when participants must repeatedly re-enter rejected Pegged Orders until a permissible price becomes available.²⁵

²⁶ It is also consistent with the Act to maintain the existing practice in the Rule of rejecting a Pegged Order without a permissible pegging price where the Order has been

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ The Exchange notes that as part of this proposed change, if there is no Pegging Price upon entry for a Displayed Order that has Market Pegging, or an Order with a Non-Display Attribute that has Primary Pegging or Market Pegging, then it will no longer accept such Orders at their limit price. The Exchange believes that this proposed change is consistent with the Act because it better aligns with customer intentions for Pegged Orders to post at a Pegging Price. That is, the Exchange believes that participants prefer for Pegged Orders to be entered at a Pegging Price, rather than its entered limit price, even if that means that the Order must wait for a Pegging Price to become available. As discussed above, the Exchange does not propose this change for Pegged Orders with Routing Attributes.

²⁶ It is also consistent with the Act to limit the time period for which the Exchange will hold, without canceling, Pegged Orders for which there is no pegging price or permissible pegging price because the Exchange does not believe that customers would want the Exchange to hold their orders indefinitely. Moreover, holding such orders indefinitely would encumber the Exchange's System. The Exchange believes that a one second holding period for such orders is long enough to provide the above-stated efficiencies for participants, but not too long as to encumber them. However, the Exchange believes that it is reasonable to reserve discretion to alter the holding period, from time to time, should it determine that doing so better meets the needs of customers or its System resources.

assigned a Routing Attribute. The Exchange is not yet prepared to hold such Orders in the same way that it proposes to do so for Pegged Orders without Routing Attributes, although it contemplates doing so in the near future.

Moreover, the proposal to amend Rule 3301B(d) to state expressly that Midpoint Pegging Orders are subject to price collars, like Orders with Primary and Market Pegging, will correct an unintended omission and ensure that the Rule is consistent with existing Exchange practice and with customer expectations. The application of these collars will prevent Pegged Orders from having prices that deviate too far away from where the security was trading when the Order was first entered.²⁷

The Exchange's proposals to amend its rules governing the Trade Now Attribute, at Rule 3301B(l), is consistent with the Act. First, it is consistent with the Act to add to Trade Now so-called "Midpoint Trade Now" functionality, which presently exists on Nasdaq. This functionality will allow market participants to have their Orders executed as a taker of liquidity should that Order become locked at its non-displayed price by a contra-side Midpoint Peg Post-Only Order. This functionality will therefore promote an efficient and orderly market by allowing Orders in this scenario to execute and resolve a locked market. Similarly, allowing a subsequent Order to execute against a locking Midpoint Peg Post-Only Order if the resting Order that is locked by the Midpoint Peg Post-Only Order has not enabled the Trade Now functionality will also promote an efficient and orderly market by allowing the incoming Order in that scenario to execute

²⁷ Additionally, the Exchange believes that it is consistent with the Act to replace the word "would" with "could" in this provision, because doing so would clarify that collars apply in circumstances in which Pegged Orders might execute, but do not necessarily do so. See supra, n.19.

and resolve an instance where Orders with a non-displayed price on both the buy and sell side of the market are priced equally but not executing against each other.

The proposed amendments to Trade Now will also streamline and simplify the instructions that participants must enter to address the handling of their orders in various locking or crossing scenarios. Rather than require a participant to manually send a Trade Now instruction whenever an Order entered through OUCH or FLITE becomes locked, the proposed amended Rule will allow for a participant to enable Trade Now functionality on a port-level basis for all Order entry protocols and for all Order Types that support Trade Now, as well as on an order-by-order basis, for the Non-Displayed Order Type, when entered through OUCH and FLITE.²⁸ Furthermore, it is consistent with the Act to add language to Rule 3301B(l) to state that Trade Now allows a resting Order that becomes locked “or crossed, as applicable, at its non-displayed price” by the “posted price” of an incoming Displayed Order to execute against a locking or crossing Order(s) automatically. The Exchange proposes to add the phrase “or crossed, as applicable,” for completeness. The Exchange also proposes to add the phrases “at its non-displayed price” and for purposes of clarity. They merely communicate that the incoming Displayed Order or Midpoint Peg Post-Only Order first posts to the Exchange Book, thereby locking or crossing the resting Order at its non-displayed price.

Finally, the Exchange believes that it is consistent with the Act to make conforming changes to the Midpoint Peg Post-Only Order Type, at Rule 3301A, which already includes Trade Now, to accommodate the adoption of Midpoint Trade Now functionality.

²⁸ As noted above, for Orders entered through RASH or FIX, Trade Now will be available on an order-by-order basis for all Order Types that support Trade Now.

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. As a general principle, the proposed changes are reflective of the significant competition among exchanges and non-exchange venues for order flow. In this regard, proposed changes that facilitate enhancements to the Exchange's System and order entry protocols as well as those that amend and clarify the Exchange's Rules regarding its Order Attributes, are pro-competitive because they bolster the efficiency, integrity, and overall attractiveness of the Exchange in an absolute sense and relative to its peers.

Moreover, none of the proposed changes will unduly burden intra-market competition among various Exchange participants. Participants will experience no competitive impact from its proposals to hold (up to one second), rather than reject (or accept at their limit price), Pegging Orders (other than those with Routing Attributes) in circumstances in which no permissible pegging price is available, as these proposals will merely eliminate unwarranted inefficiencies that ensue from the System requiring participants to repeatedly re-enter Pegged Orders until a price becomes available, or the System posting Pegged Orders at their limit prices, if there is no pegging price.

Moreover, the proposal to amend Rule 3301B(d) to state expressly that Midpoint Pegging Orders are subject to price collars, like Orders with Primary and Market Pegging, will have no competitive impact as the proposal is consistent with existing Exchange practice and with customer expectations.

The Exchange's proposals to amend its rules governing Trade Now will have no adverse competitive impact on participants. The proposed addition of Midpoint Trade

Now functionality will expand the Exchange's capabilities relative to competitors, thereby rendering it a more attractive trading venue. Moreover, this new functionality is optional for participants to employ. Meanwhile, the other proposed changes to Rule 3301B(l) will render the Trade Now Order Attribute more efficient and easier for participants to utilize. The proposed conforming changes to the Midpoint Peg Post-Only Order Type, at Rule 3301A, will merely accommodate the adoption of Midpoint Trade Now functionality.

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 Act²⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.³⁰

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

²⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁰ 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.

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-2021-40 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-2021-40. 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-2021-40 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.³¹

J. Matthew DeLesDernier
Assistant Secretary

³¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq PHLX LLC Rules

* * * * *

Equity Rules

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Equity 4 Equity Trading Rules

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Rule 3301A. Order Types.

(a) No change.

(b) Except where stated otherwise, the following Order Types are available to all Participants:

(1) – (5) No change.

(6)

(A) A "Midpoint Peg Post-Only Order" is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will execute upon entry only in circumstances where economically beneficial to the party entering the Order. The Midpoint Peg Post-Only Order is available during the Regular Market Session only.

A Midpoint Peg Post-Only Order must be assigned a limit price. When a Midpoint Peg Post-Only Order is entered, it will be priced at the midpoint between the NBBO, unless such midpoint is higher than (lower than) the limit price of an Order to buy (sell), in which case the Order will be priced at its limit price. If the NBBO is locked, the Midpoint Peg Post-Only Order will be priced at the locking price, if the NBBO is crossed or if there is no NBBO, the Order will not be accepted. The Midpoint Peg Post-Only Order will post to the System book unless it is a buy (sell) Order that is priced higher than (lower than) a sell (buy) Order on the System book, in which case it will execute at the price of the Order on the System book; provided, however, that if the Order has a Time-in-Force of IOC, the Order will be cancelled after determining whether it can be executed. For example, if the Best Bid was \$11 and the Best Offer was \$11.06, the price of the Midpoint Peg Post-Only Order would be \$11.03. If there was a Non-Displayed Order (or another Order with a Non-Display Order Attribute) on the System book to sell at \$11.02,

the incoming Midpoint Peg Post-Only Order to buy would execute against it at \$11.02. However, if there was a Non-Displayed Order (or another Order with a Non-Display Order Attribute) to sell at \$11.03, the Midpoint Peg Post-Only Order to buy would post at \$11.03. While a Midpoint Peg Post-Only Order that posts to the System book is locking a preexisting Order at its displayed price, the Midpoint Peg Post-Only Order will execute against an incoming Order only if the price of the incoming sell (buy) Order is lower (higher) than the displayed price of the preexisting Order. Thus, in the previous example, if the [incoming]NBBO is locked at \$11.03 and a Midpoint Peg Post-Only Order [locked the preexisting Non-Displayed]to buy at \$11.03 locks a displayed Order to sell at \$11.03, the Midpoint Peg Post-Only Order could execute only against an incoming Order to sell priced at less than \$11.03.

A Midpoint Peg Post-Only Order that would be assigned a price of \$1 or less per share will not be accepted.

...

* * * * *

Rule 3301B. Order Attributes.

As described in Equity 4, Rule 3301A, the following Order Attributes may be assigned to those Order Types for which they are available.

(a) – (c) No change.

(d) Pegging. Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO; provided, however, that if PSX is the sole market center at the Best Bid or Best Offer (as applicable), then the price of any Displayed Order with Primary Pegging (as defined below) will be set with reference to the highest bid or lowest offer disseminated by a market center other than PSX. An Order with a Pegging Order Attribute may be referred to as a "Pegged Order." For purposes of this rule, the price to which an Order is pegged will be referred to as the Inside Quotation, the Inside Bid, or the Inside Offer, as appropriate. There are three varieties of Pegging:

- Primary Pegging means Pegging with reference to the Inside Quotation on the same side of the market. For example, if the Inside Bid was \$11, an Order to buy with Primary Pegging would be priced at \$11.
- Market Pegging means Pegging with reference to the Inside Quotation on the opposite side of the market. For example, if the Inside Offer was \$11.06, an Order to buy with Market Pegging would be priced at \$11.06.
- Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the "Midpoint"). Thus, if the Inside Bid was \$11 and the Inside Offer was \$11.06, an Order with Midpoint Pegging would be priced

at \$11.03. An Order with Midpoint Pegging is not displayed. An Order with Midpoint Pegging may be executed in sub-pennies if necessary to obtain a midpoint price.

Pegging is available only during Market Hours. An Order with Pegging may specify a limit price beyond which the Order may not be executed; provided, however, that if an Order has been assigned a Pegging Order Attribute and a Discretion Order Attribute, the Order may execute at any price within the discretionary price range, even if beyond the limit price specified with respect to the Pegging Order Attribute. If an Order with Pegging is priced at its limit price, the price of the Order may nevertheless be changed to a less aggressive price based on changes to the Inside Quotation. In addition, an Order with Primary Pegging or Market Pegging may specify an Offset Amount, such that the price of the Order will vary from the Inside Quotation by the selected Offset Amount. The Offset Amount may be either aggressive or passive. Thus, for example, if a Participant entered an Order to buy with Primary Pegging and a passive Offset Amount of \$0.05 and the Inside Bid was \$11, the Order would be priced at \$10.95. If the Participant selected an aggressive Offset Amount of \$0.02, however, the Order would be priced at \$11.02. An Order with Primary Pegging and an Offset Amount will not be Displayed, unless the Order is Attributable. An Order with Midpoint Pegging will not be Displayed. An Order with Market Pegging and no Offset behaves as a "market order" with respect to any liquidity on the PSX Book at the Inside Quotation on the opposite side of the market because it is immediately executable at that price. If, at the time of entry, there is no price to which a Pegged Order, that has not been assigned a Routing Order Attribute, can be pegged or pegging would lead to a price at which the Order cannot be posted, the Order will not be immediately available on the Exchange Book and will be entered once there is a permissible price; provided, however, that the System will cancel the Pegged Order if no permissible pegging price becomes available within one second after Order entry (the Exchange may, in the exercise of its discretion, modify the length of this one second time period by posting advance notice of the applicable time period on its website). For a Pegged Order that has been assigned a Routing Order Attribute, if there is no permissible price to which the Order can be pegged at the time of entry, the Order will be rejected; provided, however, that a Displayed Order that has Market Pegging, or an Order with a Non-Display Attribute that has Primary Pegging or Market Pegging, will be accepted at its limit price. In the case of an Order with Midpoint Pegging, if the Inside Bid and Inside Offer are locked, the Order will be priced at the locking price[.]; and for Orders with Midpoint Pegging entered through OUCH or FLITE, if the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Order will not be accepted. However, even if the Inside Bid and Inside Offer are locked, an Order with Midpoint Pegging that locked an Order on the PSX Book would execute (provided, however, that a Midpoint Peg Post-Only Order would execute or post as described in Equity 4, Rule 3301A(b)(6)(A)).

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An Order entered through RASH or FIX with Pegging will have its price set upon initial entry and will thereafter have its price reset in accordance with changes to the relevant

Inside Quotation. An Order with Pegging receives a new timestamp whenever its price is updated and therefore will be evaluated with respect to possible execution (and routing, if it has been assigned a Routing Order Attribute) in the same manner as a newly entered Order. If the price to which an Order is pegged [is not]becomes unavailable or pegging would lead to a price at which the Order cannot be posted, the Order will be rejected if assigned a Routing Order Attribute; if the Order is not assigned a Routing Order Attribute, the Order will be removed from the Exchange Book and will be re-entered once there is a permissible price, provided however, that the System will cancel the Pegged Order if no permissible pegging price becomes available within one second after the Order was removed and no longer available on the Exchange Book (the Exchange may, in the exercise of its discretion modify the length of this one second time period by posting advance notice of the applicable time period on its website). For an Order with Midpoint Pegging, if the Inside Bid and Inside Offer become crossed or if there is no Inside Bid and/or Inside Offer, the Order will be removed from the Exchange Book and will be re-entered at the new midpoint once there is a valid Inside Bid and Inside Offer that is not crossed; provided, however, that the System will cancel the Order with Midpoint Pegging if no permissible price becomes available within one second after the Order was removed and no longer available on the Exchange Book (the Exchange may, in the exercise of its discretion modify the length of this one second time period by posting advance notice of the applicable time period on its website).

[Primary Pegging Orders and Market]Pegging Orders are subject to a collar. Any portion of a [Primary Pegging Order or Market]Pegging Order that [would]could execute, either on the Exchange or when routed to another market center, at a price of more than \$0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.

(e) – (k) No change.

(l) Trade Now. Trade Now is an Order Attribute that allows a resting Order that becomes locked or crossed, as applicable, at its non-displayed price by the posted price of an incoming Displayed Order or a Midpoint Peg Post-Only Order to execute against a locking or crossing Order(s) as a liquidity taker automatically. [, and a] Any remaining shares of the resting Order will remain posted on the PSX Book with the same priority.

- [An Order entered through RASH or FIX protocol with a Trade Now Order Attribute will execute against locking interest automatically.]When entered through RASH or FIX protocol, the Trade Now Order Attribute may be enabled on an order-by-order or a port-level basis. When entered through OUCH or FLITE, the Trade Now Order Attribute may be enabled on a port-level basis for all Order Types that support it, and for the Non-Displayed Order Type, also on an order-by-order basis.
- If there is a resting Order on the Exchange Book without the Trade Now Attribute that is locked at its non-displayed price by a Midpoint Peg Post-Only Order, new incoming Orders (with or without the Trade Now Attribute, as applicable) will be

able to execute against the Midpoint Peg Post-Only Order at the locking price. The resting Order will remain on the Exchange Book and will retain its priority relative to other resting orders on the same side of the market after the subsequent Order has executed against the Midpoint Peg Post-Only Order.

[• An Order entered through OUCH or FLITE may not be assigned a Trade Now attribute upon entry, but rather the Participant that entered the Order must send a Trade Now instruction after the Order becomes locked. If a Trade Now instruction is given when there is no locking or crossing interest, the instruction will be ignored by the System and the Order will remain on the PSX Book with the same priority. When entered through OUCH or FLITE protocol, the Trade Now instruction must be sent on an order-by-order basis.]

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