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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 74

Amendment No. (req. for Amendments *)

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"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

A proposal to amend Equity 7, Section 3 to restate the Exchanges schedule of transaction credits and charges, to eliminate the Qualified Market Maker Program

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 * Associate Vice President Principal Associate General Counsel

E-mail * brett.kitt@nasdaq.com

Telephone * (301) 978-8132 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq PHLX LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 12/09/2021


(Title *)

By John Zecca

EVP and Chief Legal Officer

(Name *)

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

 DN:
email=john.zecca@nasdaq.com
Date: 2021.12.09 14:22:13
-05'00'

Required fields are shown with yellow backgrounds and astericks.

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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SR-PHLX-2021-74 19b-4.doc

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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SR-PHLX-2021-74 Exhibit 1.doc

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 Advanced 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 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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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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SR-PHLX-2021-74 Exhibit 5.doc

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 7, Section 3 to restate the Exchange’s schedule of transaction credits and charges, to eliminate the Qualified Market Maker Program (the “QMM Program”), and to eliminate the Enhanced Market Quality Program (the “EMQ Program”), as described further below.

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

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on 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 Kitt
Associate Vice President
Principal Associate General Counsel
Nasdaq, Inc.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(301) 978-8132

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

a. Purpose

The purpose of the proposed rule change is to amend Equity 7, Section 3 to restate the Exchange’s schedule of credits and charges, to eliminate the QMM Program, which the Exchange established in 2019 and amended in 2021,³ and to eliminate the EMQ Program, which the Exchange both established and modified in 2021.⁴ The Exchange also proposes to eliminate obsolete text from Equity 7, Section 3(a).

Restatement of Schedule of Credits and Charges

Pursuant to Equity 7, Section 3, and under the heading “Order Execution and Routing,” the Exchange presently provides a series of credits to member organizations that enter displayed and non-displayed orders/quotes that execute on the Exchange and impose charges upon member organizations that remove liquidity from the Exchange. To the extent that member organizations satisfy additional volume-based criteria, they may qualify for credits that are higher than or charges that are lower than standard transaction rates. As part of its periodic efforts to invigorate and grow the Exchange by increasing the attractiveness and effectiveness of the incentives it offers to its member organizations, the Exchange proposes to substantially restate its schedule of credits and charges. These

³ See Securities Exchange Act Release No. 34-91159 (February 18, 2021), 86 FR 11343 (February 24, 2021) (SR-Phlx-2021-09); Securities Exchange Act Release No. 34-85862 (May 15, 2019), 84 FR 23112 (May 21, 2019) (SR-Phlx-2019-19).

⁴ See Securities Exchange Act Release No. 34-93406 (October 22, 2021), 86 FR 59767 (October 28, 2021) (SR-Phlx-2021-64); Securities Exchange Act Release No. 34-92754 (August 25, 2021), 86 FR 48789 (August 31, 2021) (SR-Phlx-2021-47).

changes will provide increased overall rebate opportunities available to members that add liquidity to the Exchange, while imposing a single flat fee for member organizations that remove liquidity from the Exchange.

Presently, member organizations that enter orders that execute on the Exchange pay the following fees: (i) \$0.0024 per share executed in securities entered by a member organization that accesses 0.055% or more of Consolidated Volume⁵ during the month and adds 0.025% or more of Consolidated Volume during the month; (ii) \$0.0025 per share executed in securities entered by a member organization that accesses 0.01% or more of Consolidated Volume during the month and adds 5,000 shares or more to the Exchange during the month; and (iii) \$0.0030 per share executed for all other member organizations. The Exchange proposes to eliminate all but the last of these fee tiers, such that going forward, the Exchange will charge all member organizations that remove liquidity from the Exchange a flat fee of \$0.0030 per share executed. This change will allow the Exchange to reallocate its limited resources to increase incentives for adding liquidity to the Exchange – an activity it believes is needed to improve the quality of the Exchange's market.

The Exchange presently offers the following credits to member organizations that add displayed liquidity to the Exchange: (i) \$0.0026 per share executed for Quotes/Orders entered by a member organization that provides 0.10% or more of total

⁵ Pursuant to Equity 7, Section 3, the term "Consolidated Volume" means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member organization's trading activity, the date of the annual reconstitution of the Russell Investments Indexes is excluded from both total Consolidated Volume and the member organization's trading activity.

Consolidated Volume during the month; (ii) \$0.0024 per share executed for Quotes/Orders entered by a member organization that provides 0.07% or more of total Consolidated Volume during the month; and (iii) \$0.0020 per share executed for all other quotes/orders. The Exchange proposes to restate this schedule, as follows, with the overall aims of increasing incentives for member organizations to add substantial volumes of displayed liquidity to the Exchange and providing a new incentive for member organizations to grow the extent of their liquidity adding activity relative to a baseline month.

First, the Exchange proposes modify its top \$0.0026 per share executed credit by increasing the amount of that credit to \$0.0035 per share executed. It also proposes to modify its \$0.0024 per share executed credit by: (i) increasing the amount of the credit to \$0.0034 per share executed; (ii) decreasing the liquidity add volume threshold to qualify for the credit from 0.07% to 0.05% of Consolidated Volume; and (iii) by adding a requirement that the member organization must remove at least 0.02% of total Consolidated Volume during the month.⁶ Third, the Exchange proposes to establish a new growth tier that will reward a member organization with a credit of \$0.0030 per share executed to the extent that it adds a daily average of at least 1 million shares of liquidity in all securities on the Exchange during the month and increases its average daily volume of quotes/orders added to the Exchange by 100% or more during the month relative to the month of October 2021. Finally, the Exchange notes that it will not change

⁶ By tying receipt of this liquidity adding credit to a member organization also achieving a baseline level of liquidity removal activity, the Exchange intends to continue incenting member organizations to remove liquidity even as it focuses more of its resources on adding liquidity to the Exchange.

its existing baseline credit of \$0.0020 per share executed for the addition of displayed liquidity to the Exchange.

The Exchange presently offers the following credits to member organizations that add non-displayed liquidity to the Exchange: (i) a \$0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity; (ii) a \$0.0004 per share executed credit for orders entered by a member organization that provides 0.01% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity; (iii) a \$0.0007 per share executed credit for orders entered by a member organization that provides 0.02% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity; (iv) a \$0.0012 per share executed credit for orders entered by a member organization that provides 0.05% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity; and (v) a \$0.0000 per share executed credit for other non-displayed orders that provide liquidity. The Exchange proposes to restate this schedule of credits with the aim of increasing overall incentives to add non-displayed liquidity, while simplifying the credit structure by collapsing the schedule to three non-displayed tiers.

First, the Exchange will continue to provide a \$0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity. Second, the Exchange will continue to provide a credit to a member organization that provides 0.01% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity, but it will increase the amount of that credit from \$0.0004 to \$0.0015 per share executed. Third, the Exchange will increase from \$0.0000

to \$0.0005 the base credit it provides to member organizations that add non-displayed liquidity to the Exchange.

The proposed restatement of the Exchange's schedule of credits will focus the Exchange's limited resources to incenting member organizations to add and increase the extent to which they add liquidity to the Exchange. To the extent that this effort is successful, the Exchange hopes that additional liquidity will improve the quality of the market and help to grow it over time.

Elimination of the QMM Program

As set forth in Equity 7, Section 3, the QMM Program provides supplemental incentives to member organizations that qualify as "Qualified Market Makers" or "QMMs"⁷ by making significant contribution to market quality by providing liquidity at the national best bid and offer ("NBBO")⁸ in a large number of securities for a significant portion of the day. A QMM may be, but is not required to be, a registered market maker in any security; thus, the QMM designation does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker.

The QMM program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO. In return for providing the required contribution of market-improving liquidity,

⁷ To be designated as a QMM, a member organization must quote at the NBBO at least 15% of the time during regular market hours in an average of at least 400 securities per day during a month.

⁸ For purposes of the QMM Program, a member organization is deemed to quote at the NBBO in a security if one of its MPIDs has a displayed order at either the national best bid or the national best offer or both the national best bid and offer.

the Exchange provides a QMM with the following non-cumulative supplemental credits for executions of displayed orders in securities priced at \$1 or more per share that provide liquidity on the Exchange:

1. \$0.0001 per share executed with respect to all displayed orders of a QMM in securities priced at \$1 or more per share that provide liquidity; or
2. \$0.0002 per share executed with respect to all displayed orders of a QMM in securities priced at \$1 or more per share that provide liquidity, provided that the QMM quotes the NBBO at least 10% of the time during Market Hours in an average of at least 650 securities per day during a month; or
3. \$0.0003 per share executed in Tape A securities and a credit of \$0.0002 per share executed in Tape B and Tape C securities with respect to all displayed orders of a QMM in securities priced at \$1 or more per share that provide liquidity, provided that the QMM provides 0.12% or more of total Consolidated Volume during the month and quotes the NBBO at least 10% of the time during Market Hours in an average of at least 800 securities per day during a month.

The QMM credits are in addition to any credit that the Exchange provides under Equity 7, Section 3.

Through the use of the QMM Program, the Exchange hoped to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the QMM Program reflected an effort to use financial incentives to encourage a wider variety of members to make positive commitments to promote market quality.

Unfortunately, the QMM Program did not accomplish its objectives, as it did not meaningfully improve market quality on the Exchange. Accordingly, and because the Exchange has limited resources to allocate to incentive programs like this one, the Exchange proposes to eliminate the QMM Program. Going forward, it plans to develop new incentive programs that it hopes will be more impactful.

Elimination of the Enhanced Market Quality Program

The EMQ Program provides supplemental incentives to member organizations that meet certain quality standards in acting as market makers for securities on the Exchange. It rewards member organizations that make significant contributions to market quality by providing liquidity at the NBBO in a large number of securities for a significant portion of the day.⁹

Specifically, the Exchange makes a lump sum payment at the end of each month (a “Fixed Payment”) to a member organization to the extent that the member organization, through one or more of its MPIDs, quotes at the NBBO for at least a threshold percentage of the time during Market Hours in an average number of qualifying securities per day during the month, as specified below (satisfying the “NBBO requirement”).

On a daily basis, the Exchange determines the number of securities in which each of a member organization's MPIDs satisfies the NBBO requirement. The Exchange aggregates a member organization's MPIDs to determine the number of securities for purposes of the NBBO requirement.

⁹ For purposes of the Enhanced Market Quality Program, a member organization is deemed to quote at the NBBO in a security if it quotes a displayed order of at least 100 shares in the security and prices the order at either the national best bid or the national best offer or both the national best bid and offer for the security.

The Exchange determines the amount of the Fixed Payment that it pays to a qualifying member organization, as follows. First, it determines which of five Tiers a member organization meets by virtue of the average daily number of qualifying securities for which it meets the NBBO requirement during the month (rounded to the nearest whole number) in Tapes A and B. Qualifying securities are limited to the top 1,500 securities in each of these Tapes, as determined by their total value traded during the second month prior to the current month. A member organization meets the NBBO requirement for a qualifying Tape A security on a given day to the extent that it quotes at the NBBO for at least 30% of the time during Market Hours on that day, and for a qualifying Tape B security, a member organization must quote such security at the NBBO for at least 50% of the time during Market Hours on that day.

For each tier of the EMQ Program, the Exchange has three groupings or “Classes.” The Exchange establishes the Classes by dividing the qualifying 1,500 securities into three equal groups for each Tape, with the top 500 ranked securities placed in Class 3, the middle 500 ranked securities placed in Class 2, and the lowest ranked 500 securities placed in Class 1.

The Exchange assigns Fixed Payment amounts to each of the three Classes in each Tape and in each of five Tiers, with these amounts generally increasing from Class 1 to Class 3, and from Tiers 1-5.

In sum, a member organization that meets the NBBO requirement for a requisite number of qualifying securities during a month to qualify for a particular Tier is entitled to receive the Fixed Payment that corresponds to the combination of: (i) that Tier; and (ii) the Class in which the Exchange has placed the qualifying securities for that month.

A member organization that qualifies for a Fixed Payment for securities in each of Tapes A and B and in multiple Classes within each Tape receive Fixed Payments covering qualifying securities in both Tapes, and within each Tape, for the each of the applicable Classes, but within each Tape and Class, a member organization may only qualify for one Tier during a month. The Exchange makes the Fixed Payment in addition to other rebates or fees provided under Equity 7, Sections 3 (a) - (c).

The existing schedules of Tiers, Classes, and Fixed Payments are as follows:

Tape A Securities				
Tiers	Average daily number of securities quoted at the NBBO for at least 30% of the time during Market Hours during the month	Fixed payment for securities in Tape A in Class 1	Fixed payment for securities in Tape A in Class 2	Fixed payment for securities in Tape A in Class 3
1	0-24	\$0 per qualified security per month	\$0 per qualified security per month	\$0 per qualified security per month
2	25-49	\$0 per qualified security per month	\$0 per qualified security per month	\$200 per qualified security over 24 per month
3	50-149	\$50 per qualified security per month	\$200 per qualified security over 49 per month	\$5,000 + (\$450 per qualified security over 49) per month
4	150-249	\$5,000 + (\$100 per qualified security over 149) per month	\$20,000 + (\$300 per qualified security over 149) per month	\$50,000 + (\$600 per qualified security over 149) per month
5	250 or greater	\$15,000 + (\$150 per qualified security over 249) per month	\$50,000 + (\$350 per qualified security over 249) per month	\$50,000 + (\$600 per qualified security over 149) per month

Tape B Securities

Tiers	Average daily number of securities quoted at the NBBO for at least 50% of the time during Market Hours during the month	Fixed payment for securities in Tape B in Class 1	Fixed payment for securities in Tape B in Class 2	Fixed payment for securities in Tape B in Class 3
1	0-24	\$0 per qualified security per month	\$0 per qualified security per month	\$0 per qualified security per month
2	25-49	\$0 per qualified security per month	\$0 per qualified security per month	\$100 per qualified security over 24 per month
3	50-149	\$0 per qualified security per month	\$25 per qualified security over 49 per month	\$2,500 + (\$150 per qualified security over 49) per month
4	150-249	\$50 per qualified security over 149 per month	\$2,500 + (\$50 per qualified security over 149) per month	\$17,500 + (\$300 per qualified security over 149) per month
5	250 or greater	\$5,000 + (\$75 per qualified security over 249) per month	\$7,500 + (\$150 per qualified security over 249) per month	\$17,500 + (\$300 per qualified security over 149) per month

A member organization may, but is not required to be, a registered market maker in any security to qualify for the EMQ Program; thus, the EMQ Program does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker. Accordingly, the EMQ Program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO.

In establishing the EMQ Program, the Exchange hoped to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the EMQ Program

reflected an effort by the Exchange to use its financial incentives to encourage a wider variety of member organizations other than market makers to make positive commitments to promote market quality.

Unfortunately, the Exchange's hopes for the EMQ Program have not been realized, notwithstanding refinements made to the EMQ Program earlier this year in an attempt to enhance its effectiveness. Indeed, while the EMQ Program has succeeded in incenting market participants to increase their quoting at the NBBO in qualifying securities, the number of EMQ Program participants has been small, as has been the corresponding impact on the market quality. Because the EMQ Program has not been effective in achieving its intended purposes, and because the Exchange has limited resources to allocate to incentive programs like this one, the Exchange proposes to eliminate the Enhanced Market Quality Program. Going forward, it plans to develop new incentive programs that it hopes will be more impactful.

Deletion of Obsolete Text

Finally, the Exchange proposes to eliminate text from this Rule that has become obsolete as it applied solely to Consolidated Volume calculations during the month of October 2020. The text that the Exchange proposes to delete is as follows:

(For purposes of determining which of the execution charges and credits listed below a member organization qualifies for during the month of October 2020, the Exchange will calculate the member organization's total Consolidated Volume on the Exchange for the full month of October as well as for the month of October excluding the week of October 26-30, 2020. The Exchange will then assess which total Consolidated Volume calculations would qualify the member organization for the most advantageous credits and charges for the month of October and then it will apply those credits and charges to the member organization.)

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among member organizations and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹²

Likewise, in NetCoalition v. Securities and Exchange Commission¹³ (“NetCoalition”) the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹³ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"¹⁴

The Exchange believes that the proposed elimination of the QMM and EMQ Programs is reasonable and is an equitable allocation of Exchange credits because neither program has proven to be effective in meeting its objectives, which include increasing the extent to which member organizations quote securities on the Exchange at the NBBO and improving overall market quality. Insofar as the Exchange has limited resources to devote to its incentive programs, the Exchange believes that it is reasonable and equitable for it to eliminate these two Programs and to reallocate its resources for other, more productive purposes. For similar reasons, the proposal is not unfairly discriminatory. The Exchange does not believe that the benefits enjoyed by the member organizations that participate in the QMM and EMQ Program are sufficient to justify maintaining them, as the resources the Exchange allocates to it could be put to broader and more productive use.

The Exchange also believes that its proposal is reasonable, equitable, and not unfairly discriminatory to restate its schedule of transaction credits and charges. As discussed above, the Exchange assesses a particular need to increase the extent to which its member organizations add liquidity to the Exchange as a means of improving market quality. The proposals serve that purpose by directly increasing credits for adding displayed and non-displayed liquidity, and by reallocating some resources that it currently devotes to providing discounted fees to member organizations which remove

¹⁴ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

liquidity from the Exchange. Although the proposals will benefit net adders of liquidity at the expense of net removers of liquidity, the Exchange believes that this is equitable and not unfairly discriminatory because all market participants stand to benefit to the extent that the proposals are successful in increasing liquidity on the Exchange and improving market quality. The Exchange also believes that it is reasonable, equitable, and not unfairly discriminatory to simplify its schedule of credits and charges insofar as the Exchange believes that a simpler credit/fee structure may be more comprehensible and administrable and thus, more appealing to, member organizations.

Finally, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to delete text from the Rule that has become obsolete insofar as it applied only to calculations of Consolidated Volume for the month of October 2020. Deletion of obsolete rule text ensures that the Rulebook remains current and free from extraneous and potentially confusing text.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their

order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposals do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. Thus, the proposed restatement of the Exchange's schedule of credits and charges will not unduly burden competition, even as it will increase overall incentives to net adders of liquidity to the Exchange and reduce overall incentives to net removers of liquidity from the Exchange. The Exchange believes that its need to refocus its limited resources on increasing liquidity on the Exchange as a means of improving its overall market quality justifies the costs of this proposal to member organizations that are net liquidity removers.

Additionally, given that neither the QMM nor the EMQ Program has been utilized as extensively as the Exchange expected, the proposed elimination of those two Programs will not impact more than a handful of its member organizations. To the extent that elimination of the EMQ and QMM Programs do impact these member organizations, the Exchange notes that it continues to provide other financial incentives for member organizations to participate on the Exchange.

The Exchange does not believe that any competitive impact will ensue from its proposal to eliminate obsolete rule text relating to the calculation of Consolidated Volume in October 2020. Given that the text no longer applies, its deletion will have no effect on member organizations or the Exchange whatsoever.

In sum, the proposals are designed to render the Exchange more efficient in the allocation of its limited resources and more effective in improving the quality of the Exchange's market; however, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁵ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

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-2021-74)

December __, 2021

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule at Equity 7, Section 3

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 December 9, 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 7, Section 3 to restate the Exchange's schedule of transaction credits and charges, to eliminate the Qualified Market Maker Program (the "QMM Program"), and to eliminate the Enhanced Market Quality Program (the "EMQ Program"), 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend Equity 7, Section 3 to restate the Exchange's schedule of credits and charges, to eliminate the QMM Program, which the Exchange established in 2019 and amended in 2021,³ and to eliminate the EMQ Program, which the Exchange both established and modified in 2021.⁴ The Exchange also proposes to eliminate obsolete text from Equity 7, Section 3(a).

Restatement of Schedule of Credits and Charges

Pursuant to Equity 7, Section 3, and under the heading "Order Execution and Routing," the Exchange presently provides a series of credits to member organizations that enter displayed and non-displayed orders/quotes that execute on the Exchange and impose charges upon member organizations that remove liquidity from the Exchange. To

³ See Securities Exchange Act Release No. 34-91159 (February 18, 2021), 86 FR 11343 (February 24, 2021) (SR-Phlx-2021-09); Securities Exchange Act Release No. 34-85862 (May 15, 2019), 84 FR 23112 (May 21, 2019) (SR-Phlx-2019-19).

⁴ See Securities Exchange Act Release No. 34-93406 (October 22, 2021), 86 FR 59767 (October 28, 2021) (SR-Phlx-2021-64); Securities Exchange Act Release No. 34-92754 (August 25, 2021), 86 FR 48789 (August 31, 2021) (SR-Phlx-2021-47).

the extent that member organizations satisfy additional volume-based criteria, they may qualify for credits that are higher than or charges that are lower than standard transaction rates. As part of its periodic efforts to invigorate and grow the Exchange by increasing the attractiveness and effectiveness of the incentives it offers to its member organizations, the Exchange proposes to substantially restate its schedule of credits and charges. These changes will provide increased overall rebate opportunities available to members that add liquidity to the Exchange, while imposing a single flat fee for member organizations that remove liquidity from the Exchange.

Presently, member organizations that enter orders that execute on the Exchange pay the following fees: (i) \$0.0024 per share executed in securities entered by a member organization that accesses 0.055% or more of Consolidated Volume⁵ during the month and adds 0.025% or more of Consolidated Volume during the month; (ii) \$0.0025 per share executed in securities entered by a member organization that accesses 0.01% or more of Consolidated Volume during the month and adds 5,000 shares or more to the Exchange during the month; and (iii) \$0.0030 per share executed for all other member organizations. The Exchange proposes to eliminate all but the last of these fee tiers, such that going forward, the Exchange will charge all member organizations that remove liquidity from the Exchange a flat fee of \$0.0030 per share executed. This change will allow the Exchange to reallocate its limited resources to increase incentives for adding

⁵ Pursuant to Equity 7, Section 3, the term "Consolidated Volume" means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member organization's trading activity, the date of the annual reconstitution of the Russell Investments Indexes is excluded from both total Consolidated Volume and the member organization's trading activity.

liquidity to the Exchange – an activity it believes is needed to improve the quality of the Exchange’s market.

The Exchange presently offers the following credits to member organizations that add displayed liquidity to the Exchange: (i) \$0.0026 per share executed for Quotes/Orders entered by a member organization that provides 0.10% or more of total Consolidated Volume during the month; (ii) \$0.0024 per share executed for Quotes/Orders entered by a member organization that provides 0.07% or more of total Consolidated Volume during the month; and (iii) \$0.0020 per share executed for all other quotes/orders. The Exchange proposes to restate this schedule, as follows, with the overall aims of increasing incentives for member organizations to add substantial volumes of displayed liquidity to the Exchange and providing a new incentive for member organizations to grow the extent of their liquidity adding activity relative to a baseline month.

First, the Exchange proposes modify its top \$0.0026 per share executed credit by increasing the amount of that credit to \$0.0035 per share executed. It also proposes to modify its \$0.0024 per share executed credit by: (i) increasing the amount of the credit to \$0.0034 per share executed; (ii) decreasing the liquidity add volume threshold to qualify for the credit from 0.07% to 0.05% of Consolidated Volume; and (iii) by adding a requirement that the member organization must remove at least 0.02% of total Consolidated Volume during the month.⁶ Third, the Exchange proposes to establish a new growth tier that will reward a member organization with a credit of \$0.0030 per

⁶ By tying receipt of this liquidity adding credit to a member organization also achieving a baseline level of liquidity removal activity, the Exchange intends to continue incenting member organizations to remove liquidity even as it focuses more of its resources on adding liquidity to the Exchange.

share executed to the extent that it adds a daily average of at least 1 million shares of liquidity in all securities on the Exchange during the month and increases its average daily volume of quotes/orders added to the Exchange by 100% or more during the month relative to the month of October 2021. Finally, the Exchange notes that it will not change its existing baseline credit of \$0.0020 per share executed for the addition of displayed liquidity to the Exchange.

The Exchange presently offers the following credits to member organizations that add non-displayed liquidity to the Exchange: (i) a \$0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity; (ii) a \$0.0004 per share executed credit for orders entered by a member organization that provides 0.01% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity; (iii) a \$0.0007 per share executed credit for orders entered by a member organization that provides 0.02% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity; (iv) a \$0.0012 per share executed credit for orders entered by a member organization that provides 0.05% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity; and (v) a \$0.0000 per share executed credit for other non-displayed orders that provide liquidity. The Exchange proposes to restate this schedule of credits with the aim of increasing overall incentives to add non-displayed liquidity, while simplifying the credit structure by collapsing the schedule to three non-displayed tiers.

First, the Exchange will continue to provide a \$0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity. Second, the Exchange will

continue to provide a credit to a member organization that provides 0.01% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity, but it will increase the amount of that credit from \$0.0004 to \$0.0015 per share executed. Third, the Exchange will increase from \$0.0000 to \$0.0005 the base credit it provides to member organizations that add non-displayed liquidity to the Exchange.

The proposed restatement of the Exchange's schedule of credits will focus the Exchange's limited resources to incenting member organizations to add and increase the extent to which they add liquidity to the Exchange. To the extent that this effort is successful, the Exchange hopes that additional liquidity will improve the quality of the market and help to grow it over time.

Elimination of the QMM Program

As set forth in Equity 7, Section 3, the QMM Program provides supplemental incentives to member organizations that qualify as "Qualified Market Makers" or "QMMs"⁷ by making significant contribution to market quality by providing liquidity at the national best bid and offer ("NBBO")⁸ in a large number of securities for a significant portion of the day. A QMM may be, but is not required to be, a registered market maker in any security; thus, the QMM designation does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker.

⁷ To be designated as a QMM, a member organization must quote at the NBBO at least 15% of the time during regular market hours in an average of at least 400 securities per day during a month.

⁸ For purposes of the QMM Program, a member organization is deemed to quote at the NBBO in a security if one of its MPIDs has a displayed order at either the national best bid or the national best offer or both the national best bid and offer.

The QMM program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO. In return for providing the required contribution of market-improving liquidity, the Exchange provides a QMM with the following non-cumulative supplemental credits for executions of displayed orders in securities priced at \$1 or more per share that provide liquidity on the Exchange:

1. \$0.0001 per share executed with respect to all displayed orders of a QMM in securities priced at \$1 or more per share that provide liquidity; or
2. \$0.0002 per share executed with respect to all displayed orders of a QMM in securities priced at \$1 or more per share that provide liquidity, provided that the QMM quotes the NBBO at least 10% of the time during Market Hours in an average of at least 650 securities per day during a month; or
3. \$0.0003 per share executed in Tape A securities and a credit of \$0.0002 per share executed in Tape B and Tape C securities with respect to all displayed orders of a QMM in securities priced at \$1 or more per share that provide liquidity, provided that the QMM provides 0.12% or more of total Consolidated Volume during the month and quotes the NBBO at least 10% of the time during Market Hours in an average of at least 800 securities per day during a month.

The QMM credits are in addition to any credit that the Exchange provides under Equity 7, Section 3.

Through the use of the QMM Program, the Exchange hoped to provide improved trading conditions for all market participants through narrower bid-ask spreads and

increased depth of liquidity available at the inside market. In addition, the QMM Program reflected an effort to use financial incentives to encourage a wider variety of members to make positive commitments to promote market quality.

Unfortunately, the QMM Program did not accomplish its objectives, as it did not meaningfully improve market quality on the Exchange. Accordingly, and because the Exchange has limited resources to allocate to incentive programs like this one, the Exchange proposes to eliminate the QMM Program. Going forward, it plans to develop new incentive programs that it hopes will be more impactful.

Elimination of the Enhanced Market Quality Program

The EMQ Program provides supplemental incentives to member organizations that meet certain quality standards in acting as market makers for securities on the Exchange. It rewards member organizations that make significant contributions to market quality by providing liquidity at the NBBO in a large number of securities for a significant portion of the day.⁹

Specifically, the Exchange makes a lump sum payment at the end of each month (a “Fixed Payment”) to a member organization to the extent that the member organization, through one or more of its MPIDs, quotes at the NBBO for at least a threshold percentage of the time during Market Hours in an average number of qualifying securities per day during the month, as specified below (satisfying the “NBBO requirement”).

⁹ For purposes of the Enhanced Market Quality Program, a member organization is deemed to quote at the NBBO in a security if it quotes a displayed order of at least 100 shares in the security and prices the order at either the national best bid or the national best offer or both the national best bid and offer for the security.

On a daily basis, the Exchange determines the number of securities in which each of a member organization's MPIDs satisfies the NBBO requirement. The Exchange aggregates a member organization's MPIDs to determine the number of securities for purposes of the NBBO requirement.

The Exchange determines the amount of the Fixed Payment that it pays to a qualifying member organization, as follows. First, it determines which of five Tiers a member organization meets by virtue of the average daily number of qualifying securities for which it meets the NBBO requirement during the month (rounded to the nearest whole number) in Tapes A and B. Qualifying securities are limited to the top 1,500 securities in each of these Tapes, as determined by their total value traded during the second month prior to the current month. A member organization meets the NBBO requirement for a qualifying Tape A security on a given day to the extent that it quotes at the NBBO for at least 30% of the time during Market Hours on that day, and for a qualifying Tape B security, a member organization must quote such security at the NBBO for at least 50% of the time during Market Hours on that day.

For each tier of the EMQ Program, the Exchange has three groupings or "Classes." The Exchange establishes the Classes by dividing the qualifying 1,500 securities into three equal groups for each Tape, with the top 500 ranked securities placed in Class 3, the middle 500 ranked securities placed in Class 2, and the lowest ranked 500 securities placed in Class 1.

The Exchange assigns Fixed Payment amounts to each of the three Classes in each Tape and in each of five Tiers, with these amounts generally increasing from Class 1 to Class 3, and from Tiers 1-5.

In sum, a member organization that meets the NBBO requirement for a requisite number of qualifying securities during a month to qualify for a particular Tier is entitled to receive the Fixed Payment that corresponds to the combination of: (i) that Tier; and (ii) the Class in which the Exchange has placed the qualifying securities for that month.

A member organization that qualifies for a Fixed Payment for securities in each of Tapes A and B and in multiple Classes within each Tape receive Fixed Payments covering qualifying securities in both Tapes, and within each Tape, for the each of the applicable Classes, but within each Tape and Class, a member organization may only qualify for one Tier during a month. The Exchange makes the Fixed Payment in addition to other rebates or fees provided under Equity 7, Sections 3 (a) - (c).

The existing schedules of Tiers, Classes, and Fixed Payments are as follows:

Tape A Securities				
Tiers	Average daily number of securities quoted at the NBBO for at least 30% of the time during Market Hours during the month	Fixed payment for securities in Tape A in Class 1	Fixed payment for securities in Tape A in Class 2	Fixed payment for securities in Tape A in Class 3
1	0-24	\$0 per qualified security per month	\$0 per qualified security per month	\$0 per qualified security per month
2	25-49	\$0 per qualified security per month	\$0 per qualified security per month	\$200 per qualified security over 24 per month
3	50-149	\$50 per qualified security per month	\$200 per qualified security over 49 per month	\$5,000 + (\$450 per qualified security over 49) per month
4	150-249	\$5,000 + (\$100 per qualified security over 149) per month	\$20,000 + (\$300 per qualified security over 149) per month	\$50,000 + (\$600 per qualified security over 149) per month
5	250 or greater	\$15,000 + (\$150	\$50,000 + (\$350	\$50,000 + (\$600

		per qualified security over 249) per month	per qualified security over 249) per month	per qualified security over 149) per month
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Tape B Securities				
Tiers	Average daily number of securities quoted at the NBBO for at least 50% of the time during Market Hours during the month	Fixed payment for securities in Tape B in Class 1	Fixed payment for securities in Tape B in Class 2	Fixed payment for securities in Tape B in Class 3
1	0-24	\$0 per qualified security per month	\$0 per qualified security per month	\$0 per qualified security per month
2	25-49	\$0 per qualified security per month	\$0 per qualified security per month	\$100 per qualified security over 24 per month
3	50-149	\$0 per qualified security per month	\$25 per qualified security over 49 per month	\$2,500 + (\$150 per qualified security over 49) per month
4	150-249	\$50 per qualified security over 149 per month	\$2,500 + (\$50 per qualified security over 149) per month	\$17,500 + (\$300 per qualified security over 149) per month
5	250 or greater	\$5,000 + (\$75 per qualified security over 249) per month	\$7,500 + (\$150 per qualified security over 249) per month	\$17,500 + (\$300 per qualified security over 149) per month

A member organization may, but is not required to be, a registered market maker in any security to qualify for the EMQ Program; thus, the EMQ Program does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker. Accordingly, the EMQ Program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO.

In establishing the EMQ Program, the Exchange hoped to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the EMQ Program reflected an effort by the Exchange to use its financial incentives to encourage a wider variety of member organizations other than market makers to make positive commitments to promote market quality.

Unfortunately, the Exchange's hopes for the EMQ Program have not been realized, notwithstanding refinements made to the EMQ Program earlier this year in an attempt to enhance its effectiveness. Indeed, while the EMQ Program has succeeded in incentivizing market participants to increase their quoting at the NBBO in qualifying securities, the number of EMQ Program participants has been small, as has been the corresponding impact on the market quality. Because the EMQ Program has not been effective in achieving its intended purposes, and because the Exchange has limited resources to allocate to incentive programs like this one, the Exchange proposes to eliminate the Enhanced Market Quality Program. Going forward, it plans to develop new incentive programs that it hopes will be more impactful.

Deletion of Obsolete Text

Finally, the Exchange proposes to eliminate text from this Rule that has become obsolete as it applied solely to Consolidated Volume calculations during the month of October 2020. The text that the Exchange proposes to delete is as follows:

(For purposes of determining which of the execution charges and credits listed below a member organization qualifies for during the month of October 2020, the Exchange will calculate the member organization's total Consolidated Volume on the Exchange for the full month of October as well as for the month of October excluding the week of October 26-30, 2020. The Exchange will then assess which total Consolidated Volume calculations would qualify the member organization

for the most advantageous credits and charges for the month of October and then it will apply those credits and charges to the member organization.)

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among member organizations and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹²

Likewise, in NetCoalition v. Securities and Exchange Commission¹³ (“NetCoalition”) the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system,

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹³ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁴

The Exchange believes that the proposed elimination of the QMM and EMQ Programs is reasonable and is an equitable allocation of Exchange credits because neither program has proven to be effective in meeting its objectives, which include increasing the extent to which member organizations quote securities on the Exchange at the NBBO and improving overall market quality. Insofar as the Exchange has limited resources to devote to its incentive programs, the Exchange believes that it is reasonable and equitable for it to eliminate these two Programs and to reallocate its resources for other, more productive purposes. For similar reasons, the proposal is not unfairly discriminatory. The Exchange does not believe that the benefits enjoyed by the member organizations that participate in the QMM and EMQ Program are sufficient to justify maintaining them, as the resources the Exchange allocates to it could be put to broader and more productive use.

The Exchange also believes that its proposal is reasonable, equitable, and not unfairly discriminatory to restate its schedule of transaction credits and charges. As discussed above, the Exchange assesses a particular need to increase the extent to which its member organizations add liquidity to the Exchange as a means of improving market quality. The proposals serve that purpose by directly increasing credits for adding

¹⁴ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

displayed and non-displayed liquidity, and by reallocating some resources that it currently devotes to providing discounted fees to member organizations which remove liquidity from the Exchange. Although the proposals will benefit net adders of liquidity at the expense of net removers of liquidity, the Exchange believes that this is equitable and not unfairly discriminatory because all market participants stand to benefit to the extent that the proposals are successful in increasing liquidity on the Exchange and improving market quality. The Exchange also believes that it is reasonable, equitable, and not unfairly discriminatory to simplify its schedule of credits and charges insofar as the Exchange believes that a simpler credit/fee structure may be more comprehensible and administrable and thus, more appealing to, member organizations.

Finally, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to delete text from the Rule that has become obsolete insofar as it applied only to calculations of Consolidated Volume for the month of October 2020. Deletion of obsolete rule text ensures that the Rulebook remains current and free from extraneous and potentially confusing text.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory

standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposals do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. Thus, the proposed restatement of the Exchange's schedule of credits and charges will not unduly burden competition, even as it will increase overall incentives to net adders of liquidity to the Exchange and reduce overall incentives to net removers of liquidity from the Exchange. The Exchange believes that its need to refocus its limited resources on increasing liquidity on the Exchange as a means of improving its overall market quality justifies the costs of this proposal to member organizations that are net liquidity removers.

Additionally, given that neither the QMM nor the EMQ Program has been utilized as extensively as the Exchange expected, the proposed elimination of those two Programs will not impact more than a handful of its member organizations. To the extent that elimination of the EMQ and QMM Programs do impact these member organizations, the Exchange notes that it continues to provide other financial incentives for member organizations to participate on the Exchange.

The Exchange does not believe that any competitive impact will ensue from its proposal to eliminate obsolete rule text relating to the calculation of Consolidated

Volume in October 2020. Given that the text no longer applies, its deletion will have no effect on member organizations or the Exchange whatsoever.

In sum, the proposals are designed to render the Exchange more efficient in the allocation of its limited resources and more effective in improving the quality of the Exchange's market; however, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁵

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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2021-74 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-2021-74. 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-2021-74 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq PHLX Rules

* * * * *

EQUITY 7 PRICING SCHEDULE**Sections 1 -2 No change****Section 3 Nasdaq PSX Fees**

...

Order Execution and Routing

(a) The following charges and credits shall apply to the use of the order execution and routing services of the Nasdaq PSX System by member organizations for all securities that it trades priced at \$1 or more per share:

[(For purposes of determining which of the execution charges and credits listed below a member organization qualifies for during the month of October 2020, the Exchange will calculate the member organization's total Consolidated Volume on the Exchange for the full month of October as well as for the month of October excluding the week of October 26-30, 2020. The Exchange will then assess which total Consolidated Volume calculations would qualify the member organization for the most advantageous credits and charges for the month of October and then it will apply those credits and charges to the member organization.)]

(1) Fees for Execution of Quotes/Orders in Nasdaq-Listed Securities, Securities Listed on the New York Stock Exchange ("NYSE") and Securities Listed on Exchanges other than Nasdaq and NYSE. As used in this rule, the term "Consolidated Volume" shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

Charge to member organization entering order that executes in Nasdaq PSX:

[\$0.0024 per share executed in securities entered by a member organization that accesses 0.055% or

	more of Consolidated Volume during the month and adds 0.025% or more of Consolidated Volume during the month
	\$0.0025 per share executed in securities entered by a member organization that accesses 0.01% or more of Consolidated Volume during the month and adds 5,000 shares or more to the Exchange during the month]
	\$0.0030 per share executed[for all other member organizations]
Credit to member organization providing liquidity through the Nasdaq PSX System:	
Displayed Quote/Order:	\$0.00[26]35 per share executed for Quotes/Orders entered by a member organization that provides 0.10% or more of total Consolidated Volume during the month
	\$0.00[24]34 per share executed for Quotes/Orders entered by a member organization that provides 0.0[7]5% or more of total Consolidated Volume during the month <u>and removes 0.02% of total Consolidated Volume during the month</u>
	<u>\$0.0030 per share executed for Quotes/Orders entered by a member organization that: (i) provides a daily average of at least 1 million shares of liquidity in all securities on the Exchange during the month; and (ii) increases its average daily volume of Quotes/Orders added to the Exchange by 100% or more during the month relative to the month of October 2021</u>
	\$0.0020 per share executed for all other Quotes/Orders
Non-Displayed Order Charges and Credits:	\$0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity

\$0.00[04]15 per share executed credit for orders entered by a member organization that provides 0.01% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity

[\$0.0007 per share executed credit for orders entered by a member organization that provides 0.02% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity]

[\$0.0012 per share executed credit for orders entered by a member organization that provides 0.05% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity]

\$0.000[0]5 per share executed credit for other non-displayed orders that provide liquidity

(2) Fees for Routing of Orders in All Securities

No change.

(b) No change.

(c) Reserved.[Qualified Market Maker ("QMM") Program

- (1) A member may be designated as a QMM if the member organization (i) quotes at the NBBO at least 15% of the time during Market Hours in an average of at least 400 securities per day during a month.
- (2) The Exchange will provide a credit of \$0.0001 per share executed with respect to all displayed orders of a QMM in securities priced at \$1 or more per share that provide liquidity. Such credit will be in addition to any credit provided under Equity 7, Section 3.
- (3) In lieu of the credit described in subparagraph (c)(2), the Exchange will provide a credit of \$0.0002 per share executed with respect to all displayed orders of a QMM in securities priced at \$1 or more per share that provide liquidity, provided that the

QMM quotes the NBBO at least 10% of the time during Market Hours in an average of at least 650 securities per day during a month. Such credit will be in addition to any credit provided under Equity 7, Section 3.

- (4) In lieu of the credits described in subparagraphs (c)(2) and (c)(3), the Exchange will provide a credit of \$0.0003 per share executed in Tape A securities and a credit of \$0.0002 per share executed in Tape B and Tape C securities with respect to all displayed orders of a QMM in securities priced at \$1 or more per share that provide liquidity, provided that the QMM provides 0.12% or more of total Consolidated Volume during the month and quotes the NBBO at least 10% of the time during Market Hours in an average of at least 800 securities per day during a month. Such credit will be in addition to any credit provided under Equity 7, Section 3.
- (5) For purposes of this rule, a member organization is considered to be quoting at the NBBO if one of its MPIDs has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, the Exchange will determine the number of securities in which each of a member organization's MPIDs satisfied the 10% or 15% NBBO requirement. The Exchange will aggregate all of a member organization's MPIDs to determine the number of securities for purposes of the 10% or 15% NBBO requirement. To qualify for QMM designation, the member organization must meet the applicable requirement for an average number of securities per day over the course of the month.]

(d) [PSX Enhanced Market Quality Program]Reserved.

[As set forth below, the Exchange shall provide a lump sum payment at the end of each month (a "PSX Fixed Payment") to a member organization to the extent that the member organization, through one or more of its MPIDs, quotes at the NBBO for at least a threshold percentage of the time during Market Hours in an average number of securities per day during the month (as specified below). On a daily basis, the Exchange will determine the number of securities in which each of a member organization's MPIDs satisfied the NBBO requirement. The Exchange will aggregate all of a member organization's MPIDs to determine the number of securities for purposes of the NBBO requirement. For purposes of this program, a member organization will be deemed to quote at the NBBO in a security if it quotes a displayed order of at least 100 shares in the security and prices the order at either the national best bid or the national best offer or both the national best bid and offer for the security. The Exchange will determine the amount of the PSX Fixed Payment that it pays to a qualifying member organization by multiplying the average daily number of its qualifying securities during the month (rounded to the nearest whole number) within the range set forth in the Tier and Class (defined below) by the applicable amounts set forth in the following paragraphs and adding the specified lump sum, where applicable. For purposes of determining the applicable PSX Fixed Payment, the Exchange will also maintain lists of the top 1,500 securities in each of Tapes A and B, as ranked by total value traded during the second month prior to the current month, and divide the securities into three equal Classes apiece in ascending order (i.e., the lowest 500 securities in Class 1, the middle 500 securities in

Class 2, and the top 500 securities in Class 3), with each Class being assigned a corresponding PSX Fixed Payment amount. For member organizations that meet the NBBO requirement for a requisite number of qualifying securities during a month to qualify for a particular Tier, the member organization will receive the PSX Fixed Payment that corresponds to the combination of: (i) that Tier; and (ii) the Class in which the Exchange has placed the qualifying securities for that month.

A member organization that qualifies for a PSX Fixed Payment for securities in each of Tapes A and B and in multiple Classes within each Tape will receive PSX Fixed Payments covering qualifying securities in both Tapes, and within each Tape, for each of the applicable Classes, but within each Tape and Class, a member organization may only qualify for one Tier during a month. The Exchange will pay the PSX Fixed Payment in addition to other rebates or fees provided under Equity 7, Sections 3(a) - (c).

As of the outset of every month, the Exchange will reevaluate and, as applicable, update its lists of securities in each Class, and it will publish its updated lists on its website as of the outset of the month in which they will apply.]

[Tape A Securities				
Tiers	Average daily number of securities quoted at the NBBO for at least 30% of the time during Market Hours during the month	Fixed payment for securities in Tape A in Class 1	Fixed payment for securities in Tape A in Class 2	Fixed payment for securities in Tape A in Class 3
1	0-24	\$0 per qualified security per month	\$0 per qualified security per month	\$0 per qualified security per month
2	25-49	\$0 per qualified security per month	\$0 per qualified security per month	\$200 per qualified security over 24 per month

[Tape A Securities				
Tiers	Average daily number of securities quoted at the NBBO for at least 30% of the time during Market Hours during the month	Fixed payment for securities in Tape A in Class 1	Fixed payment for securities in Tape A in Class 2	Fixed payment for securities in Tape A in Class 3
3	50-149	\$50 per qualified security over 49 per month	\$200 per qualified security over 49 per month	\$5,000 + (\$450 per qualified security over 49) per month
4	150-249	\$5,000 + (\$100 per qualified security over 149) per month	\$20,000 + (\$300 per qualified security over 149) per month	\$50,000 + (\$600 per qualified security over 149) per month
5	250 or greater	\$15,000 + (\$150 per qualified security over 249) per month	\$50,000 + (\$350 per qualified security over 249) per month	\$50,000 + (\$600 per qualified security over 149) per month

Tape B Securities

Tiers	Average daily number of securities quoted at the NBBO for at least 50% of the time during Market Hours during the month	Fixed payment for securities in Tape B in Class 1	Fixed payment for securities in Tape B in Class 2	Fixed payment for securities in Tape B in Class 3
1	0-24	\$0 per qualified security per month	\$0 per qualified security per month	\$0 per qualified security per month
2	25-49	\$0 per qualified security per month	\$0 per qualified security per month	\$100 per qualified security over 24 per month
3	50-149	\$0 per qualified security per month	\$25 per qualified security over 49 per month	\$2,500 + (\$150 per qualified security over 49) per month
4	150-249	\$50 per qualified security over 149 per month	\$2,500 + (\$50 per qualified security over 149) per month	\$17,500 + (\$300 per qualified security over 149) per month
5	250 or greater	\$5,000 + (\$75 per qualified security over 249) per month	\$7,500 + (\$150 per qualified security over 249) per month	\$17,500 + (\$300 per qualified security over 149) per month]

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