

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87728; File No. SR-Phlx-2019-51)

December 12, 2019

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Securities Traded Pursuant to Unlisted Trading Privileges

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 3, 2019, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 delete Phlx Rules 800–853, 867 and 868, under the title “Standards for Trading Securities Pursuant to Unlisted Trading Privileges.” Phlx Rules 860-866 are being relocated to new PSX Rules 3236–3242, respectively. The Exchange proposes to amend Phlx Rule 1000, titled “Applicability, Definitions and References,” PSX Rule 3100, titled “Limit Up-Limit Down Plan and Trading Halts on PSX,” and Rule 3202, titled “Application of Other Rules of the Exchange.” The Exchange proposes to adopt a new PSX Rule 3204, titled “Securities Traded under Unlisted Trading Privileges,” PSX Rule 3232, titled “Advertising Practices,” PSX Rule 3233, titled “Prevention of the Misuse of Material, Nonpublic Information” and PSX Rule 3234, titled “Additional Requirements for Securities Issued by Nasdaq or its

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Affiliates.” Phlx Rule 136, titled “Trading Halts in Certain Exchange Traded Funds,” is being deleted and replaced with new proposed rules. PSX Rule 3234 is being added to the PSX Rules to specify that equity Affiliate Securities will not be listed on the Exchange. Finally, the Exchange is amending Phlx Rule 990, “Additional Requirements for Securities Listed on the Exchange Issued by Nasdaq or its Affiliates” to make clear the rule is applicable to equities and options.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to delete Phlx Rules 800–853, 867 and 868, under the title “Standards for Trading Securities Pursuant to Unlisted Trading Privileges.” Phlx Rules 860-866 are being relocated to new PSX Rules 3236–3242, respectively. The Exchange proposes to amend Phlx Rule 1000, titled “Applicability, Definitions and References,” PSX Rule 3100, titled “Limit Up-Limit Down Plan and Trading Halts on PSX,” and Rule 3202, titled “Application of Other Rules of the Exchange.” The Exchange proposes to adopt a new PSX Rule 3204, titled

“Securities Traded under Unlisted Trading Privileges,” PSX Rule 3232, titled “Advertising Practices,” PSX Rule 3233, titled “Prevention of the Misuse of Material, Nonpublic Information” and PSX Rule 3234, titled “Additional Requirements for Securities Issued by Nasdaq or its Affiliates.” Phlx Rule 136, titled “Trading Halts in Certain Exchange Traded Funds,” is being deleted and replaced with new proposed rules. PSX Rule 3234 is being added to the PSX Rules to specify that equity Affiliate Securities will not be listed on the Exchange. Finally, the Exchange is amending Phlx Rule 990, “Additional Requirements for Securities Listed on the Exchange Issued by Nasdaq or its Affiliates” to make clear the rule is applicable to equities and options.

Today, Nasdaq PSX (“PSX”) does not list equity securities. Rather, PSX trades NMS stocks listed on other exchanges on an unlisted trading privileges basis. PSX Rule 3202 notes that Phlx Rule 803, titled “Listing Standards for Unlisted Trading Privileges,” is applicable to market participants trading on PSX. Phlx Rule 803 supports unlisted trading privileges for NMS stocks on PSX, but it also contains listing standards that are not currently applicable because PSX does not list equity securities. The Exchange proposes to delete Phlx Rule 803 and remove cross-references to this Rule within Phlx Rule 1000 and PSX Rule 3202. The Exchange notes that it is retaining the rule text within Phlx Rule 803(o)(2) and relocating that rule text within PSX Rule 3204(a)(3) as described below in greater detail.

In addition to deleting Rule 803 and the cross-reference to Rule 803 from PSX Rule 1000 and 3202, the Exchange proposes to delete Phlx Rules 800, 802, 804-853,³ 867 and 868 which contain listing standards for equity securities. The Exchange’s proposal to adopt proposed PSX

³ The Exchange notes that Phlx Rules 800-868 do not apply to the options market. The rule text of Phlx Rules 801, 803(o)(2) and 860-866 are being relocated within the new rule text.

Rule 3204 will provide for the trading of equity securities pursuant to unlisted trading privileges. If at a later date PSX determines to list equity securities, it would file a proposed rule change with the Commission.

Proposed Rule 3204

PSX proposes to adopt a new PSX Rule 3204, titled “Securities Traded under Unlisted Trading Privileges” to describe the manner in which PSX will trade securities pursuant to unlisted trading privileges. As noted above, while today Phlx Rule 803 permits the trading of securities pursuant to unlisted trading privileges, proposed new PSX Rule 3204 will make clear the applicability of PSX’s unlisted trading privileges to any security that is an NMS Stock (as defined in Rule 600 of Regulation NMS under the Act) that is listed on another national securities exchange. Proposed Rule 3204 is similar to NYSE National, Inc. (“NYSE National”) Rule 5.1.

Proposed PSX Rule 3204(a) provides “Only such securities admitted pursuant to unlisted trading privileges shall be dealt in on the Exchange. The Exchange will not list equity securities pursuant to any Rule until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its Rules to make any changes needed to comply with Rules 10A-3 and 10C-1 under the Exchange Act and to incorporate additional qualitative and other listing criteria, and such proposed rule change is approved by the Commission. Therefore, the provisions of the Exchange’s Rules are not effective to permit the listing of equity securities.” This is the case today and this proposed new rule text, which replaces current Phlx Rule 803, makes clear that PSX is not a listing venue. The rule would further specify in proposed Rule 3204(a)(1) that the Exchange may extend unlisted trading privileges to any security that is an NMS Stock that is listed on another national securities exchange or with respect to which

unlisted trading privileges may otherwise be extended in accordance with Section 12(f) of the Exchange Act and any such security shall be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted.

This proposed rule text states the Exchange's authority to trade securities on an UTP basis and provides that the Exchange may extend UTP to any security that is an NMS Stock that is listed on another national securities exchange or with respect to which UTP may otherwise be extended in accordance with Section 12(f) of the Exchange Act.⁴ This proposed text is based on NYSE National Rule 5.1.

The proposed rule defines a UTP Security within proposed Rule 3100(b)(7) as a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges. The Exchange describes the manner in which it distributes an information circular prior to the commencement of trading in each UTP Exchange Traded Product within Rule 3204(a)(2). The circular would generally include the same information as is contained in the information circular provided by the listing exchange, including (a) the special risks of trading the new Exchange Traded Product, (b) the Exchange Rules that will apply to the new Exchange Traded Product, and (c) information about the dissemination of value of the underlying assets or indices.

Proposed Rule 3204(a)(2)(B) also sets forth member organization prospectus delivery requirements. In addition, the Exchange requires that member organizations provide each purchaser of UTP Exchange Traded Products a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the

⁴ 15 U.S.C. 78I(f).

first transaction in such securities is delivered to such purchaser. A member organization carrying an omnibus account for a non-member organization is required to inform such non-member organization that execution of an order to purchase UTP Exchange Traded Products for such omnibus account will be deemed to constitute an agreement by the non-member organization to make such written description available to its customers on the same terms as are directly applicable to the member organization under this Rule. Upon request of a customer, a member organization will also provide a prospectus for the particular UTP Exchange Traded Product.

Proposed Rule 3204(a)(2)(C) indicates that trading halts for UTP Exchange Traded Products will be pursuant to PSX Rule 3100, which is described below. Proposed Rule 3204(a)(2)(D) provides for certain Market Maker restrictions that exist today for market makers. Proposed Rule 3204(a)(2)(D) requires certain restrictions for any member organization registered as a market maker in an UTP Exchange Traded Product that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities (collectively, “Reference Assets”). Specifically, such a Market Maker must file with the Exchange and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives (collectively with Reference Assets, “Related Instruments”), which the member organization acting as registered market maker may have or over which it may exercise investment discretion.⁵ As noted above, these restrictions are applicable today.

⁵ The proposed rule would also, more specifically, require a market maker to file with the Exchange and keep current a list identifying any accounts (“Related Instrument Trading Accounts”) for which related instruments are traded (1) in which the market maker holds

Proposed Rule 3204(a)(2)(E) provides that the Exchange will enter into comprehensive surveillance sharing agreements with markets that trade components of the index or portfolio on which the UTP Exchange Traded Product is based to the same extent as the listing exchange's rules require the listing exchange to enter into comprehensive surveillance sharing agreements with such markets.

The Exchange proposes to relocate rule text from Phlx Rule 803(o)(2) into proposed new PSX Rule 3204(a)(3). This rule text provides that prior to the commencement of trading of contingent value rights (“CVRs”) on the Exchange, the Exchange will distribute a circular providing guidance to its member organizations regarding compliance responsibilities (including suitability recommendations and account approval) when handling transactions in CVRs.

PSX Rule 3100

The Exchange proposes to amend Rule 3100, “Limit Up-Limit Down Plan and Trading Halts on PSX”. The Exchange proposes to amend PSX Rule 3100(a)(1) to remove the following provision, “(A) during a trading halt imposed by such exchange to permit the dissemination of material news; or (B).” A provision regarding dissemination of material news is included in proposed Rule 3100(d). Further, the Exchange proposes to amend the next sentence to clarify the sentence by stating, “In the event that the Exchange initiates a trading halt based on another exchange's operational trading halt, PSX may resume trading and permit PSX Participants to commence entry of orders and quotations and trading at any time following initiation of the other exchange's operational trading halt.” The Exchange is not substantively amending this rule text,

an interest, (2) over which it has investment discretion, or (3) in which it shares in the profits and/or losses. In addition, a market maker would not be permitted to have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account that has not been reported to the Exchange as required by the proposed rule.

rather the rule text is being clarified. The Exchange proposes to remove the “without regard to procedures for resuming trading set forth in paragraph (c),” because the Exchange would follow the procedure in subparagraph (c) in the event that a trading halt were initiated.

The Exchange proposes to eliminate the rule text within Rule 3100(a)(2)⁶ and (4).⁷ The rule text within Rule 3100(a)(2) applies to listed securities which are no longer applicable. The rule text within Rule 3100(a)(4) is outdated.

Halting of securities is covered by Rule 3100(a)(1) and (2) as well as proposed rule text within 3100(d) through (f). The Exchange proposes to eliminate the rule text within Rule 3100(a)(3)⁸ because that rule is being replaced by Rule 3100(f) which is substantially similar to

⁶ PSX Rule 3100(a)(2) provides, “The Exchange may halt trading in an index warrant on PSX whenever Exchange staff shall conclude that such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following: (A) trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value; (B) the current calculation of the index derived from the current market prices of the stocks is not available; (C) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; or”

⁷ PSX Rule 3100(a)(4) provides, “If a primary listing market issues an individual stock trading pause in any of the Circuit Breaker Securities, as defined herein, the Exchange will pause trading in that security until trading has resumed on the primary listing market. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, the Exchange may resume trading in such stock. The provisions of this paragraph (a)(4) shall be in effect during a pilot set to end on February 4, 2014. During the pilot, the term "Circuit Breaker Securities" shall mean all NMS stocks other than NMS stocks subject to the Regulation NMS Plan to Address Extraordinary Market Volatility.”

⁸ PSX Rule 3100(a)(3) provides, “The Exchange shall halt trading in Derivative Securities Products (as defined in Rule 3100(b)(4)(A)) for which a net asset value ("NAV") (and in the case of Managed Fund Shares or actively managed exchange-traded funds, a Disclosed Portfolio, as defined in Rule 803(n)) is disseminated if the Exchange becomes aware that the NAV (or, if applicable, the Disclosed Portfolio) is not being disseminated to all market participants at the same time. The Exchange will maintain the trading halt until such time as trading resumes in the listing market.”

NYSE National Rule 7.18(c) and describes the halting of trading in a UTP Exchange Traded Product. Removing repetitive and outdated rule text will bring greater clarity to the manner in which PSX may halt pursuant to Rule 3100. The Exchange proposes to renumber PSX Rule 3100(a)(5) as (a)(2).

The Exchange proposes to delete the text currently in Rule 3100(b)(1)-(3) and retain the text currently in Rule 3100(b)(4) as new “(b)” as the new proposed rule text within Rule 3100(f) is generally duplicative of the rule text within Rule 3100(b)(1) - (3) as explained below. The Exchange is replacing references to “Trust Shares,” “Index Fund Shares,” “Managed Fund Shares,” and “Trust Issued Receipts” within Rule 803(i), (j), (l), and (n), with definitions of those terms,⁹ which are proposed to be added to Rule 3100(b)(1)(A) -(D). Further, the definition of “Required Value” is being removed as this definition is obsolete and is not utilized within the PSX Rules with the addition and deletion of rule text as proposed herein. The Exchange proposes to define the term “UTP Listing Market” the same as NYSE National Rule 1.1(jj) within Rule 3100(b)(5). The Exchange proposes to define the term “UTP Regulatory Halt” the same as NYSE National 1.1(kk) within Rule 3100(b)(6). Also, the Exchange proposes to define the term “UTP Security” the same as NYSE National 1.1(ii) within Rule 3100(b)(7).¹⁰

The Exchange proposes to add a new Rule 3100(d) which provides for UTP Regulatory Halts. Substantially identical to NYSE National Rule 7.18, the Exchange proposes that if the UTP Listing Market declares a UTP Regulatory Halt, the Exchange will halt trading in that security until it receives notification from the UTP Listing Market that the halt or suspension is no longer in effect or as provided for in Rule 3100(a)(2) and Phlx Rule 133 provided that, during

⁹ The definitions are unchanged from the rules which are being deleted.

¹⁰ While the definitions of “UTP Listing Market,” “UTP Regulatory Halt,” and “UTP Security” are new, these concepts are contained within existing PSX Rules.

Regular Market Session, the Exchange will halt trading until it receives the first Price Band¹¹ in that security. If a UTP Regulatory Halt was issued for the purpose of dissemination of material news, the Exchange will assume that adequate publication or dissemination has occurred upon the expiration of one hour after initial publication in a national news dissemination service of the information that gave rise to an UTP Regulatory Halt and may, at its discretion, reopen trading at that time, notwithstanding notification from the UTP Listing Market that the halt or suspension is no longer in effect.

The Exchange proposes new rule text at Rule 3100(e) to provide that there would be no halt cross or re-opening cross in a UTP Security. NYSE National Rule 7.18 provides for detail concerning orders' acceptance and cancellations following a UTP Regulatory Halt. PSX similarly proposes a rule to describe the manner in which its system will handle interest in the event of a trading halt. PSX's rules differ from NYSE National in that each market has different order types and system handling related to each respective equity market. The Exchange proposes herein to provide similar information with respect to the manner in which PSX would conduct a re-opening in a UTP Security. The Exchange will process new and existing orders in a UTP Security during a trading halt as follows:

- (1) cancel any unexecuted portion of Midpoint Peg and Midpoint Peg Post-Only Orders;
- (2) maintain all other resting Orders in the Exchange Book at their last ranked price and displayed price;
- (3) accept and process all cancellations; and
- (4) Orders, including Order modifications, entered during the trading halt or pause will not be accepted.

¹¹ Price Band shall mean the Price Band as described within PSX Rule 3100(a)(2).

The Exchange believes that providing this detail will bring greater transparency to the Exchange's Rules with respect to trading halts and the handling of Orders.

Today, the Exchange does not cancel Midpoint Peg¹² and Midpoint Peg Post-Only¹³ Orders during a trading halt. At this time, the Exchange proposes to begin to cancel Midpoint Peg and Midpoint Peg Post-Only Orders in conjunction with a trading halt similar to The Nasdaq Stock Market LLC ("Nasdaq").¹⁴ Midpoint Peg and Midpoint Peg Post-Only Orders are pegged to the midpoint of the NBBO, relying on current market conditions. During a trading halt, there is no updated NBBO and therefore information becomes stale. Today Nasdaq does not accept these Orders when there is no NBBO.¹⁵ Further, today PSX rejects these Orders if there is no

¹² See PSX Rule 3301B(d) which provides, "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." Further, PSX Rule 3301B(d) provides, "Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the "Midpoint")."

¹³ See PSX Rule 3301A(b)(6)(A) which provides, "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."

¹⁴ See Nasdaq Rule 4702(b)(5)(C), which provides that Midpoint Peg Post-Only Orders will be cancelled by the System when a trading halt is declared, and any Midpoint Peg Post-Only Orders entered during a trading halt will be rejected. See also Nasdaq Rule 4703(d).

¹⁵ See Nasdaq Rule 4702(b)(5)(A), which provides, "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." See also Nasdaq Rule 4703(d).

NBBO.¹⁶ Once a trading halt occurs, and some time has passed, market conditions can change and expose a market participant to risk. The Exchange believes that cancelling Midpoint Peg and Midpoint Peg Post-Only Orders after a trading halt will reduce risk for market participants as it does today on Nasdaq.

With respect to the remainder of proposed Rule 3100(e), the Exchange notes that today resting Orders are maintained in the Exchange Book, cancellations are processed and Orders, including Order modifications, are not accepted. The Exchange is memorializing this system behavior within Rule 3100(e).

Finally, the Exchange proposes new rule text within Rule 3100(f) which describes trading halts for UTP Exchange Traded Products, which the Exchange has defined within the Rule similar to NYSE National 1.1(m).¹⁷ Rules proposed within the provisions of 3100(f) are similar to NYSE National Rule 7.18(c). The Exchange provides in Rule 3100(f)(1), “If a UTP Exchange Traded Product begins trading on the Exchange in the Pre-Market Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of the Intraday Indicative Value (“IIV”) or the value of the underlying index, as applicable, to such UTP Exchange Traded Product, by a major market data vendor, the Exchange may continue to trade the UTP Exchange

¹⁶ See PSX Rule 3301A(b)(6), which states, “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, it will nevertheless be priced at the midpoint between the NBBO (provided, however, that the Order may execute as described below), and if there is no NBBO, the Order will be rejected.” See also PSX Rule 3301(B)(d).

¹⁷ The proposed definition of UTP Exchange-Traded Products is substantially similar to NYSE National Rule 1.1(m), except that it also includes Index Fund Shares and NextShares within its definition of a UTP Exchange Traded Product because these are also ETPs that the Exchange can trade on a UTP basis.

Traded Product for the remainder of the Pre-Market Session.” The Exchange provides in Rule 3100(f)(2), “Regular Market Session. During the Regular Market Session, if a temporary interruption occurs in the calculation or wide dissemination of the applicable IIV or value of the underlying index by a major market data vendor and the listing market halts trading in the UTP Exchange Traded Product, the Exchange, upon notification by the primary listing market of such halt due to such temporary interruption, also shall immediately halt trading in the UTP Exchange Traded Product on the Exchange.”

The Exchange also proposes to adopt Post-Market Session and Pre-Market Session rules which provide if the IIV or the value of the underlying index continues not to be calculated or widely available after the close of the Regular Market Session, the Exchange may trade the UTP Exchange Traded Product in the Post-Market Session only if the listing market traded such securities until the close of its regular trading session without a halt. Further, if the IIV or the value of the underlying index continues not to be calculated or widely available as of the commencement of the Pre-Market Session on the next business day, the Exchange shall not commence trading of the UTP Exchange Traded Product in the Pre-Market Session that day. If an interruption in the calculation or wide dissemination of the IIV or the value of the underlying index continues, the Exchange may resume trading in the UTP Exchange Traded Product only if calculation and wide dissemination of the IIV or the value of the underlying index resumes or trading in the UTP Exchange Traded Product resumes in the primary listing market. The Exchange believes that adopting new rule text and eliminating obsolete and redundant rule text within PSX Rule 3100 will bring greater transparency to UTP trading on the Exchange.

PSX Rule 3232

The Exchange also proposes to adopt new PSX Rule 3232 to govern advertising practices, which is substantively identical to NYSE National Rule 11.3.5. The rule provides that no member organization either directly or indirectly, in connection with the purchase or sale of any security that has listed or unlisted trading privileges on the Exchange, may publish, circulate or distribute any advertisement, sales literature or market letter or make oral statements or presentations which the member organization knows, or in the exercise of reasonable care should know, contain any untrue statement of material fact or which is otherwise false or misleading. Exaggerated or misleading statements or claims are prohibited.

Advertisements, sales literature and market letters shall contain the name of the member organization, the person or firm preparing the material, if other than the member organization, and the date on which it was first published, circulated or distributed (except that in advertisements only the name of the member organization need be stated). No cautionary statements or caveats, often called hedge clauses, may be used if they could mislead the reader or are inconsistent with the content of the material. Advertising, sales literature, and market letter must be approved by a designated officer, partner or other official of the member organization. A file of the advertising, sales literature, and market letter and the preparer and approver need to be retained for 3 years. Member organizations must file with the Exchange, or the designated self-regulatory organization, within 5 business days after initial use, each advertisement unless such advertisement may be published under the rules of another self-regulatory organization regulating the member organization under the Act. Testimonial material based on experience with the member organization or concerning any advice, analysis, report or other investment related service rendered by the member organization must make clear that such testimony is not necessarily indicative of future performance or results obtained by others. Testimonials also

shall state whether any compensation has been paid to the maker, directly or indirectly, and if the material implies special experience or expert opinion, the qualifications of the maker of the testimonial should be given. Any statement to the effect that a report or analysis or other service will be furnished free or without any charge shall not be made unless it will be furnished entirely free and without condition or obligation. Finally, no claim or implication may be made for research or other facilities beyond those which the member organization actually possesses or has reasonable capacity to provide.

The Exchange believes that this Rule will guide member organizations as to the manner in which they may advertise, including specifically with respect to UTP Securities. The rule is intended to prevent misleading, confusing or untrue statements from enticing sales of products. The Exchange would bring action against a member organization that violated this rule pursuant to the Exchange's disciplinary rules within the Phlx 8000 and 9000 series.

PSX Rule 3233

The Exchange also proposes to adopt new PSX Rule 3233, titled "Prevention of the Misuse of Material, Nonpublic Information," which is substantively identical to NYSE National Rule 11.5.5. Proposed PSX Rule 3233 would require every member organization to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such member or member organizations. For purposes of this requirement, the misuse of material, nonpublic information would include, without limitation, the following: (a) trading in any securities issued by a corporation, or in any related securities or related options or other derivatives securities while in possession of material, non-public information concerning that issuer; or (b) trading in a security or related options or other derivatives securities, while in possession of material, non-public information concerning

imminent transactions in the security or related securities; or (c) disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

Further, the Rule provides that each member organization for which the Exchange is the DEA should establish, maintain, and enforce written policies and procedures similar to the following, as applicable: all members must be advised in writing of the prohibition against the misuse of material, non-public information; and all members must sign attestations affirming their awareness of, and agreement to abide by the aforementioned prohibitions. These signed attestations must be maintained for at least three years, the first two years in an easily accessible place; and each member organization must receive and retain copies of trade confirmations and monthly account statements for each account in which a member: has a direct or indirect financial interest or makes investment decisions. The activity in such brokerage accounts should be reviewed at least quarterly by the member organization for the express purpose of detecting the possible misuse of material, non-public information; and all members must disclose to the member organization whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decisions, are an officer, director or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company shall be reviewed to determine whether the transaction may have involved a misuse of material non-public information.

Finally, the Exchange notes that member organizations acting as a registered Market Maker in UTP Exchange Traded Products, and their affiliates, shall also establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset

or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments.

This rule is intended to prevent misuse of material information by member organizations, including specifically with respect to UTP Exchange Traded Products. The Exchange would bring action against a member organization that violated this rule pursuant to the Exchange's disciplinary rules within the Phlx 8000 and 9000 series.

PSX Rule 3234

The Exchange proposes to replicate the term "Nasdaq Affiliate" from Phlx Rule 990(a)(1) into PSX Rule 3234(a)(1) and replicate and amend the term "Affiliate Security" from Rule 990(a)(2) into PSX Rule 3234(a)(2). The Exchange proposes to not include the exception for Trust Shares and Index Fund Shares in the proposed definition of Affiliate Security. The Exchange also proposes to add new PSX Rule 3234(b) to specify that equity Affiliate Securities will not be listed on the Exchange. Finally, the Exchange proposes to add rule text to PSX Rule 3234(c) to note that throughout the trading of the Affiliate Security on the Exchange, the Exchange will prepare a quarterly report on the Affiliate Security for the Exchange's Regulatory Oversight Committee that describes Exchange regulatory staff's monitoring of the trading of the Affiliate Security including summaries of all related surveillance alerts, complaints, regulatory referrals, adjusted trades, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security's compliance with the Exchange's trading rules. This proposed rule is substantively identical to NYSE National Rule 3.1.

The Exchange will retain current Phlx Rule 990 with some amendments to reflect that Phlx Rule 990 is applicable to both equities and options. In addition, references to Rule 803(i) and (l) are being replaced with definitions for Trust Shares and Index Fund Shares from those

portions of the rule. Finally, references to the 800 series are removed from the rule text.

Rulebook Reorganization

The Exchange has undertaken a Rulebook reorganization. As part of this reorganization, the Exchange has filed a new Rulebook shell that clearly identifies rules associated with its equity product separate from rules applicable to options products. The Exchange proposes to relocate rules applicable to PSX within the equity portions of the Rules. The relocation of the new rules into PSX Rules will make clear the applicability of these rules to the equity product.

Deletions and Cross-References

The Exchange proposes to delete Phlx Rule 136, titled “Trading Halts in Certain Exchange Traded Funds,” which is obsolete as it applies to listed securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by adopting a new PSX Rule that governs UTP trading. Currently, Phlx Rule 803 governs PSX’s trading of securities pursuant to unlisted trading privileges but also includes listing standards that are not applicable to PSX because PSX does not list equity securities.²⁰ The Exchange’s proposal to adopt proposed PSX Rule 3204 will more concisely provide for UTP trading. The Exchange believes that adopting proposed PSX

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ Current Phlx Rule 803 provides for certain initial and continued listing requirements which do not apply today.

Rule 3204 is consistent with the Act because the proposed rule will provide greater transparency as to the manner in which PSX will trade securities pursuant to unlisted trading privileges and the type of information that will be provided to Members. In addition, the rule provides information as to other relevant requirements that Members must abide by when trading in securities pursuant to unlisted trading privileges. Finally, the Exchange's obligation with respect to surveillance is specified.

The Exchange's proposal to delete Phlx Rules 800-853, 867 and 868 is consistent with the Act because these rules do not currently reflect PSX's practice of trading securities pursuant to unlisted trading privileges, with the exception of Phlx Rule 801 which rule text is being retained and relocated within the proposed rules. The Exchange's proposal to relocate Phlx Rules 860-866 into PSX Rules 3236-3242, respectively, will bring greater transparency to these equity rules which would now be located within the PSX Rules. The Exchange's proposal to amend PSX Rules 1000 and 3202 to remove the cross-reference to Phlx Rule 803 is a conforming change because the Exchange is deleting Phlx Rule 803, except for the text within Rule 803(o)(2) which is being relocated to PSX Rule 3204(a)(3).

The Exchange has undertaken a Rulebook reorganization. As part of this reorganization, the Exchange has filed a new Rulebook shell that clearly identifies rules associated with its equity product separate from rules applicable to options products. The Exchange proposes to delete obsolete text and adopt new PSX Rule 3204 for trading securities pursuant to unlisted trading privileges in the PSX portion of the Rulebook to clarify the applicability of these rules to equity trading thereby protecting investors and the public interest. The Exchange notes that if at a later date PSX determines to list securities, it would file a proposed rule change with the Commission.

The Exchange's proposal to amend Rule 3100 to remove obsolete rule text and add rule text to describe UTP Regulatory Halts, the processing of new and existing orders in a UTP Security during a trading halt, and halts in UTP Exchange Traded Products will provide Members with greater transparency in each of these circumstances. Phlx Rule 136 is no longer necessary as the Rule applies to listed securities. This rule is being deleted and replaced with new proposed rules. The rule text within proposed Rule 3100(e) proposes a change to the treatment of Midpoint Peg and Midpoint Peg Post-Only Orders during a trading halt. Today, the Exchange does not cancel Midpoint Peg and Midpoint Peg Post-Only Orders during a trading halt. With this proposal, the Exchange proposes to begin to cancel Midpoint Peg and Midpoint Peg Post-Only Orders in conjunction with a trading halt similar to Nasdaq.²¹ Midpoint Peg and Midpoint Peg Post-Only Orders are pegged to the midpoint of the NBBO. These Orders rely on current market conditions. During a trading halt, there is no updated NBBO and therefore information becomes stale. Today Nasdaq does not accept these orders when there is no NBBO.²² Further, today PSX rejects these Orders if there is no NBBO.²³ Once a trading halt occurs, and some time has passed, market conditions can change and expose a market participant to risk. The Exchange believes that cancelling Midpoint Peg and Midpoint Peg Post Only Orders after a trading halt is consistent with the Act and the protection of investors and the public interest because it will reduce risk for market participants as it does today on Nasdaq.

With respect to the remainder of proposed Rule 3100(e), the Exchange notes that today resting Orders are maintained in the Exchange Book, cancellations are processed and Orders,

²¹ See note 14 above.

²² See note 15 above.

²³ See note 16 above.

including Order modifications,²⁴ are not accepted. The Exchange’s proposal memorializes current system behavior within Rule 3100(e). While the Exchange does not cancel all Orders it does allow a market participant to elect which Orders to cancel. Providing this information within proposed PSX Rule 3100(e) is consistent with the Act and the protection of investors and the public interest because all market participants will have more transparency as to the expected system behavior during a trading halt. This information will allow market participants to make informed decisions about their Orders on PSX.

The adoption of new PSX Rules 3232 (Advertising Practices) and PSX Rule 3233 (Prevention of the Misuse of Material, Nonpublic Information) will provide clear guidance within PSX Rules for Members with respect to advertising practices and utilization of non-public information for the protection of investors and the general public who are harmed by such behavior.

PSX Rule 3234

The Exchange’s proposal to adopt a new PSX Rule 3234 to define the terms “Nasdaq Affiliate” and “Affiliate Security” similar to Phlx Rule 990(a)(1) and (2) and not include the exception for Trust Shares and Index Fund Shares in the relocated definition of Affiliate Security will bring greater transparency to the proposed new rule which seeks to specify that equity Affiliate Securities (including any Trust Shares and Index Fund Shares) will not be listed on the Exchange.

The amendments to current Phlx Rule 990 are consistent with the Act because they properly reflect the applicability of the rule to both equities and options. The remainder of the rule changes to Phlx Rule 990 are non-substantive.

²⁴ Order modifications are comprised of a cancellation and resubmission of a new Order.

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. Specifically, the Exchange believes that clarifying the Phlx Rules that are applicable to the equity product and removing obsolete rules will bring greater transparency to the Rulebook. The rules regarding unlisted trading privileges, advertising practices and use of non-public information apply equally to all PSX Members. Further, updating PSX Rule 3100 will bring greater information to the manner in which the system handles trading halts for all PSX Members.

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) of the Act²⁵ and Rule 19b-4(f)(6) thereunder.²⁶

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange may immediately adopt rules that govern UTP trading, delete obsolete rules in its rulebook, and reorganize its rules for greater clarity. The Commission also notes that, as discussed above, certain proposed rules are substantially similar to NYSE National Rules 1.1, 3.1, 5.1, 7.18, 11.3.5 and 11.5.5, and NYSE National is similar to PSX in that it trades securities only pursuant to unlisted trading privileges. Moreover, as discussed above, the proposal to cancel Midpoint Peg and Midpoint Peg Post-Only Orders during a trading halt is based on current Nasdaq functionality. The Commission believes that the proposal does not raise any new or novel regulatory issues. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.²⁹

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

²⁷ 17 CFR 240.19b-4(f)(6).

²⁸ 17 CFR 240.19b-4(f)(6)(iii).

²⁹ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings to determine whether the proposed rule change 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-2019-51 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2019-51. 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 website (<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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2019-51, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Jill M. Peterson
Assistant Secretary

³⁰ 17 CFR 200.30-3(a)(12).