

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104789; File No. SR-PHLX-2026-06]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange’s Schedule of Fees and Rebates to Bring It into Compliance with New Reg NMS Rule 610(d)

February 9, 2026.

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 January 30, 2026, 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 the Exchange’s transaction fees at PHLX Rule Equity 7, Section 3, to bring the Exchange’s schedule of fees and rebates into compliance with Reg NMS Rule 610(d), which becomes effective on February 2, 2026.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on February 2, 2026.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/rulefilings>, and at the principal office of the Exchange.

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 the Exchange’s transaction fees at PHLX Rule Equity 7, Section 3, to bring the Exchange schedule of equities transaction fees and rebates into compliance with Reg NMS Rule 610(d), which becomes effective on February 2, 2026.

On September 18, 2024, the Commission adopted several amendments to Reg NMS in order to increase the transparency of exchange fees and rebates.³ New Reg NMS Rule 610(d) provides that “[a] national securities exchange shall not impose, nor permit to be imposed, any fee or fees, or provide, or permit to be provided, any rebate or other remuneration, for the execution of an order in an NMS stock that cannot be determined at the time of execution.”⁴ The original compliance date for new Reg NMS Rule 610(d) was the first business day of November 2025, which was Monday, November 3, 2025.⁵ However, on October 31, 2025, the Commission

³ See Securities Exchange Act Release No. 101070 (Sept. 18, 2024), 89 FR 81620 (Oct. 8, 2024) (File No. S7-30-22) (Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders.) (“Rule 610(d) Adopting Release”).

⁴ 17 CFR 242.610(d).

⁵ See Rule 610(d) Adopting Release, 89 FR at 81680.

granted temporary exemptive relief to delay the implementation date until the first business day of February 2026, which is Monday, February 2, 2026.⁶

Currently, the Exchange establishes certain transaction fees and rebates for equities executions that are based on tiers calculated using volume figures from trading or quoting activity in the current month. This means that the fees and rebates at the Exchange associated with a given equities execution often cannot be determined at the time of execution, but only retroactively at the end of the month in which the execution occurred. In order to ensure that its transaction fees and rebates for equities executions are compliant with new Reg NMS Rule 610(d), the Exchange is adding the following text to PHLX Rule Equity 7, Section 3:

Rule of Interpretation: In compliance with Reg NMS Rule 610(d), effective February 2, 2026, for purposes of determining quoting or transaction volumes for fees and rebates qualifications under this section, all volume figures will be derived from quoting or trading activity in the prior month. Consequently, new members will receive the base rates in their first month of trading.

This change will ensure that all Exchange participants will be able to ascertain at the time of execution all the transactions fees and rebates associated with an execution of an order in an NMS stock at the Exchange.

⁶ See Securities Exchange Act No. 104172 (Oct. 31, 2025), 90 FR 51418 (Nov. 17, 2025) (Order Granting Temporary Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rules 610(f) and 612(d) of Regulation NMS, From Compliance With Rule 600(b)(89)(i)(F), Rule 610(c), Rule 610(d) and Rule 612 of Regulation NMS, as Amended).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, 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 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’”⁹

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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

⁹ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (Dec. 2, 2008), 73 FR 74770, 74782-83 (Dec. 9, 2008) (SR-NYSEArca-2006-21)).

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.”¹⁰

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that the modification made in this filing to the schedule of transaction fees and rebates is reasonable because it attempts to preserve the current quoting and trading incentives, while bringing them into compliance with the requirements of new Reg NMS Rule 610(d). Currently, members are assessed certain execution fees, and paid certain execution rebates, based on tiers calculated using volume figures from trading and quoting activity in the current month. In order to bring these existing fees and rebates into compliance with new Reg NMS Rule 610(d), the Exchange is modifying the criteria for these fees and rebates so that they are based on tiers calculated using volume figures from trading and quoting activity in the prior

¹⁰ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

month. This way all fees and rebates associated with the execution of an order in an NMS stock at the Exchange can be determined at the time of execution of said order. All existing fees and rebates remain otherwise unchanged.

The Exchange believes that the modified schedule of transaction fees and rebates is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fees and rebates to all similarly situated members.

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 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 proposed changes to the fees assessed and rebates available to member firms for execution of securities in securities of all three Tapes 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.

The proposed fees and rebates are identical to the Exchange's existing fees and rebates, except that in order to comply with new Reg NMS Rule 610(d), all transaction fees and rebates that are based on tiers of transaction or quoting volumes will now be calculated using volume figures derived from trading and quoting activity in the prior month.

In sum, if the change proposed herein is 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 change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. In terms of intra-market competition, the modified transaction fees and rebates will apply equally to all members of the Exchange. Therefore, the proposed changes do not impose any burden on competition. However, even if these fees and rebates imposed a burden on competition, such a burden would be necessary or appropriate in furtherance of the purposes of the Act because these changes are being made to bring the Exchange's schedule of transactions of fees and rebates into compliance with new Reg NMS Rule 610(d).

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.¹¹

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

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-PHLX-2026-06 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-2026-06. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely

from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-PHLX-2026-06 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Sherry R. Haywood,

Assistant Secretary.

¹² 17 CFR 200.30-3(a)(12).