SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98280; File No. SR-PHLX-2023-40)

September 1, 2023

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change to Amend Equity 4, Rules 3301A and 3301B to Establish New "Contra Midpoint Only" and "Contra Midpoint Only with Post-Only" Order Types and to Make Other Corresponding Changes to the Rulebook

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 August 28, 2023, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 4, Rules 3301A and 3301B[3] to establish new "Contra Midpoint Only" and "Contra Midpoint Only with Post-Only" Order Types, and to make other corresponding changes to the Rulebook.

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.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

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 amend Equity 4, Rule 3301A(b) to establish "Contra Midpoint Only" or "CMO" and "Contra Midpoint Only with Post-Only" or "CMO+PO" as new Order Types on the Exchange.

A CMO is a Non-Displayed Order Type priced at the midpoint between the National Best Bid and the National Best Offer (the "NBBO" and the midpoint of the NBBO, the "Midpoint"). The Exchange will remove a CMO resting on the Order Book upon entry of certain types of incoming Orders that are likely to result in unfavorable executions, including because the incoming Orders are likely to indicate price movements that would be more favorable to the resting CMO user than the prevailing price. Thus, the CMO provides protection to the resting CMO user against executions at the prevailing Midpoint price that the user may deem unfavorable. As explained below, once the System removes a CMO under these circumstances, the Exchange would submit a new CMO at the then-current Midpoint price automatically on behalf of the user. [4]

[4] In certain instances below, the Exchange uses the term "removal" rather than the term "cancellation" to describe how the System would behave when handling a CMO. When

A CMO+PO is like a CMO, except that it provides for "post-only" functionality, meaning that like a Midpoint Peg Post-Only Order,[5] a CMO+PO will execute upon entry only in circumstances where economically beneficial to the party entering the Order.

The CMO and CMO+PO are Order Types that the Exchange has developed to provide market participants with options that allow them to make their own determinations with regards to various trade-offs that exist when executing their strategies in the markets. One such trade off might be the amount of liquidity they can obtain in the near term versus the potential for market movement relative to the Midpoint price. Some participants may value avoiding immediate executions in order to wait for a better price while others would rather obtain the liquidity instead of waiting.

In this regard, CMO resembles an order type that the Exchange's sister market, the Nasdaq Stock Market LLC ("Nasdaq"), introduced in 2018 – the Midpoint Extended Life Order ("M-ELO").[6] Like CMO, M-ELO is also a non-displayed Order Type that executes only at the Midpoint. It is eligible to execute only against other M-ELOs, and it protects users from interacting with time-sensitive orders by requiring them to wait a period of time (a "Holding Period") before their M-ELO is eligible to execute (originally one-half second, and subsequently reduced to 10 milliseconds).[7] In 2019, Nasdaq enhanced the M-ELO concept by adding the

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the Exchange removes a CMO from its Order Book, it would not send a cancellation message when doing so, thus limiting the potential for information leakage.

5 See Rule 3301A(b)(6).

6 See Securities Exchange Act Release No. 34-82825 (Mar. 7, 2018), 83 FR 10937 (Mar. 13, 2018) (order approving SR-NASDAQ-2017-074).

7 In 2020, the Commission issued an order approving the Nasdaq's proposal to shorten the Holding Period for M-ELO and M-ELO+CB Orders from one-half second to 10 milliseconds. See Securities Exchange Act Release No. 34-88743 (April 24, 2020), 85 FR 24068 (April 30, 2020) (order approving SR-NASDAQ-2020-011).

Midpoint Extended Life Order Plus Continuous Book ("M-ELO+CB").[8] A M-ELO+CB behaves exactly like a M-ELO, except that it may also interact with Midpoint Orders on Nasdaq's Continuous Book (and thus have access to larger sources of liquidity) to the extent that such Midpoint Orders, in turn, opt to rest on the Continuous Book for at least 10 milliseconds before becoming eligible to execute against a M-ELO+CB. CMO and CMO+PO are variations on the M-ELO/M-ELO+CB theme. M-ELOs only trade against other Orders from like-minded participants that are willing to wait the required time period before trading. CMOs and CMO+POs, by contrast, can trade in a wider array of situations, but like M-ELO, they will not trade in instances where the incoming order is likely to impact the prevailing price of the security. This will provide users of CMOs and CMO+POs with opportunities for more liquidity interaction than M-ELO but without a delay mechanism. On the other hand, CMOs and CMO+POs will provide more protection to users than regular Midpoint Orders, but with less opportunity to interact with liquidity. Instead of imposing a waiting period, the Exchange will remove a resting CMO when it faces incoming orders that have the potential to shift the Midpoint, while also providing an opportunity to a participant to receive price improvement when the System resubmits its CMO or CMO+PO to take advantage of a shift in the Midpoint.

The specific proposed characteristics of the CMO are as follows:

A CMO is a non-displayed Order Type with the Midpoint Pegging Attribute that will be priced and ranked in time order at the Midpoint. A user may cancel a CMO at any time.

The System will remove a CMO Order automatically if a CMO is resting at the Midpoint on the PSX Book, an incoming Order is priced through the price of the CMO, the CMO would

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8 See Securities Exchange Act Release No. 34-86938 (September 11, 2019), 84 FR 48978 (September 17, 2019) (order approving SR-NASDAQ-2019-048).

otherwise trade against the incoming Order, [9] and one or more of the following conditions apply, which the Exchange anticipates are indicative of a pending price shift in favor of the CMO user:

- The incoming Order is Displayed and its size is greater than that of the resting CMO; or
- The incoming Order is not Displayed, it is priced at or better than the far side of the NBBO, and its size is greater than that of the resting CMO.

Again, in the first of these scenarios, the Exchange observes that the incoming Order has the potential to cause the NBBO to shift, such that removal of the CMO will be preferable to allowing the CMO to execute at a Midpoint price that may be stale. The System will then automatically re-submit a new CMO on behalf of the user after removing the original CMO. In the second scenario, the incoming Order may not cause a shift in the NBBO, due to its hidden nature, but because it is priced aggressively at the far side of the NBBO, it still offers a CMO user an opportunity for an execution that is more favorable than the prevailing midpoint price. CMO functionality enables a participant to avail itself of this opportunity.

The following examples illustrate this concept. In the first example, assume that the National Best Bid is $10.00 and the National Best Offer is $11.00. Participant A enters Order 1, which is a CMO to buy 100 shares of X that is priced at $10.50 – the midpoint of the NBBO. While Order 1 is resting on the Exchange Book, Participant B enters Order 2, which is a Displayed Order to sell 200 shares of X at $10.40. In this instance, Order 2 is larger than Order 1. If Order 1 was not a CMO and it had executed against Order 2 at $10.50, then Participant A would have missed out on the favorable impact of Order 2 shifting the midpoint of the NBBO

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9 For example, if the incoming Order is filled fully by resting interest with price/time priority ahead of the resting CMO Order, then the System will not remove the CMO Order from the Order Book.

lower to $10.20. To avoid this outcome, however, the System would remove Order 1 from the Exchange Book and resubmit it as Order 3, priced at $10.20. Participant C then enters Order 4 to sell 100 shares of X at 10.20. Order 3 would then execute against Order 4 at $10.20, thus providing Participant A with price improvement.

In a second example, assume again that the National Best Bid is $10.00 and the National Best Offer is $11.00. Participant A again enters Order 1, which is a CMO to buy 100 shares of X that is priced at $10.50. While Order 1 is resting on the Exchange Book, Participant B enters Order 2, which this time is a Non-Displayed Order to sell 200 shares at $10.00. CMO functionality would activate for Order 1 both because Order 2 is larger than Order 1 and because Order 2 is priced at the far side of the NBBO. The System would resubmit Order 1 as Order 3, priced at $10.00. Order 3 would then execute at $10.00, again providing price improvement to Participant A.[10]

Additionally, because a CMO inherently possesses the Midpoint Pegging Attribute, it will behave in accordance with Rule 3301B(d), which governs Orders with Midpoint Pegging. Thus, consistent with Rule 3301B(d), the following behavior applies to CMOs:

- A CMO user may only enter a CMO Order during Market Hours.
- A CMO will have its price set upon initial entry and will thereafter have its price reset in accordance with changes to the relevant Inside Quotation. A CMO will receive a new timestamp whenever its price is updated[11] and therefore will be evaluated with respect to possible execution in the same manner as a newly entered Order. If the

10 There also may be scenarios where use of CMO might not ultimately benefit market participants, such as where the amount of price improvement associated with use of CMO is outweighed by the fee a participant would incur when its CMO is deemed to remove liquidity from the Exchange Book.

11 A CMO will also receive a new timestamp whenever it is resubmitted after removal.

price to which a CMO is pegged becomes unavailable, pegging would lead to a price at which the CMO cannot be posted, or if the Inside Bid and Inside Offer become crossed, then the CMO will be removed from the PSX Book and will be re-entered once there is a permissible price, provided however, that the System will cancel the CMO if no permissible pegging price becomes available within one second after the CMO was removed and no longer available on the PSX Book (the Exchange may, in the exercise of its discretion modify the length of this one second time period by posting advance notice of the applicable time period on its website).[12]

- If at the time of entry, there is no price to which a CMO, that has not been assigned a Time in Force of Immediate-or-Cancel, can be pegged or pegging would lead to a price at which the Order cannot be posted, or if the Inside Bid and Inside Offer are Crossed, then the CMO will not be immediately available on the PSX Book and will be entered once there is a permissible price; provided however, that the System will cancel the CMO if no permissible pegging price becomes available within one second after Order entry (the Exchange may, in the exercise of its discretion, modify the length of this one second time period by posting advance notice of the applicable time period on its website).
- A CMO will have its price set upon initial entry to the Midpoint, unless the CMO has a limit price, and that limit price is lower than the Midpoint for a CMO to buy (higher than the Midpoint for CMO to sell), in which case the Order will be ranked on the PSX Book at its limit price. If the Inside Bid and Inside Offer are locked, a CMO will be priced at the locking price. However, even if the Inside Bid and Inside Offer

[12] A user may enter a CMO using RASH or OUCH.

are locked, an Order with CMO that locked an Order on the PSX Book would execute.

- If a CMO has been assigned a Discretion Order Attribute, the CMO may execute at any price within the discretionary price range, even if beyond the limit price specified with respect to the Midpoint Pegging Order Attribute. If CMO is priced at its limit price, the price of the CMO may nevertheless be changed to a less aggressive price based on changes to the Inside Quotation.

Unlike other Orders with the Midpoint Pegging Attribute, CMOs cannot be assigned a Routing Attribute, such that provisions of the Midpoint Pegging Rule that govern Midpoint Pegged Orders with Routing do not apply to CMOs.

As noted above, a CMO will not be accepted outside of Market Hours. A CMO remaining unexecuted at the end of Market Hours will be cancelled by the System.

The System will cancel CMOs when a trading halt is declared, and the System will reject any CMOs entered during a trading halt.[13]

A CMO user may opt to apply the Minimum Quantity, Trade Now, or Discretion Order Attributes and a Time-In-Force to a CMO. Again, the Non-Display and Midpoint Pegging Attributes always apply to CMOs.

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13 The Exchange also proposes to amend the Exchange's Rule governing Midpoint Pegging, at Rule 3301B(d), to add language stating that "Orders with Midpoint Pegging will be cancelled by the System when a trading halt is declared, and any Orders with Midpoint Pegging entered during a trading halt will be rejected." Such language exists in a corresponding rule of the rulebook of the Exchange's sister exchange, the Nasdaq Stock Market, LLC, see Nasdaq Rule 4703(d), but was mistakenly omitted from Rule 3301B(d).

A CMO+PO will possess all the characteristics and attributes of a CMO, as described above, as well as those of a Managed Midpoint Peg Post-Only Order, as set forth in Rule 3301A(b)(6), with certain exceptions set forth below.

Like a Midpoint Peg Post-Only Order, a CMO+PO is a Non-Displayed Order that is priced at the Midpoint and executes upon entry only in circumstances where economically beneficial to the party entering the Order.

Like a Midpoint Peg Post-Only Order, the price of the CMO+PO will be updated repeatedly to equal the midpoint between the NBBO; provided, however, that the CMO+PO will not be priced higher (lower) than its limit price. In the event that the Midpoint between the NBBO becomes higher than (lower than) the limit price of a CMO+PO to buy (sell), the price of the CMO+PO will stop updating and the CMO+PO will post (with a Non-Display Attribute) at its limit price, but will resume updating if the Midpoint becomes lower than (higher than) the limit price of the CMO+PO to buy (sell). Similarly, if a CMO+PO is on the PSX Book and subsequently the NBBO is crossed, or if there is no NBBO, the Order will be removed from the PSX Book and will be re-entered at the new Midpoint once there is a valid NBBO that is not crossed. The CMO+PO receives a new timestamp each time its price is changed.

All CMO+POs will be cancelled if they remain on the PSX Book at the end of Market Hours.[14] Also like a Midpoint Peg Post-Only Order, a CMO+PO may not possess the Discretion or Routing Order Attributes, and a CMO+PO must be priced at more than $1 per share. Finally, unlike a Midpoint Peg Post-Only Order, RASH may be used to enter a CMO+PO with a Time in

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[14] A CMO+PO entered prior to the beginning of Market Hours will be rejected. A CMO+PO will be cancelled by the System when a trading halt is declared, and any CMO+PO entered during a trading halt will be rejected.

Force of IOC (as well as OUCH, which can be used for such purposes with respect to a MPPO), and in such cases the Order will be canceled after determining whether it can be executed.

CMO and CMO+PO executions will be reported to Securities Information Processors and provided in the Exchange's proprietary data feed without any new or special indication.

As part of the surveillance the Exchange currently performs, CMOs and CMO+POs will be subject to real-time surveillance to determine if they are being abused by market participants. The Exchange is committed to determining whether there is opportunity or prevalence of behavior that is inconsistent with normal risk management behavior. Manipulative abuse is subject to potential disciplinary action under the Exchange's Rules, and other behavior that is not necessarily manipulative but nonetheless frustrates the purposes of the CMO or CMO+PO may be subject to penalties or other participant requirements to discourage such behavior, should it occur.[15]

The Exchange plans to implement CMO and CMO+PO within thirty days after Commission approval of the proposal. The Exchange will make the CMO and CMO+PO available to all members and to all securities upon implementation. The Exchange will announce the implementation date by Equity Trader Alert.[16]

2. <u>Statutory Basis</u>

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is

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15 Punitive fees or other participant requirements tied to CMO and CMO+PO usage will be implemented by rule filing under Section 19(b) of the Act, 15 U.S.C. 78s(b), should the Exchange determine that they are necessary to maintain a fair and orderly market.

16 The Exchange plans to propose a fee structure for the CMO and CMO+PO in a subsequent Commission rule filing.

17 15 U.S.C. 78f(b).

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. In particular, the proposal is consistent with the Act because it would create additional options with respect to how participants can manage trading at the Midpoint. These additional options allow participants to tune their interactions more finely in the market, which can lead to more efficient trading opportunities on the Exchange for investors with similar investment objectives.[19] Much like the analogous M-ELO Order Type, which Nasdaq introduced a few years ago, CMO and CMO+PO would provide market participants with a means to avoid certain execution scenarios which they may deem unfavorable. Unlike M-ELO, however, which imposes a waiting period upon participants to bring like-minded participants together, the CMO and CMO+PO would have no such waiting period. That is, the Exchange designed CMO and CMO+PO for participants that want Midpoint or better executions but have a greater urgency to execute their orders and are not concerned about interacting with other participants acting with similar or more urgency. At the same time, the CMO and CMO+PO will avoid interacting with orders that have the potential to shift the Midpoint, even without a holding period, by providing for the System to remove a CMO or CMO+PO from the Order Book when faced with incoming Orders that cross the Midpoint or otherwise have the potential to shift the Midpoint. The System will then automatically enter a new CMO to take advantage of a better ensuing Midpoint.

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18 15 U.S.C. 78f(b)(5).

19 Cf. Securities Exchange Act Release No. 34-82825 (March 7, 2018), 83 FR 10937 (March 13, 2018) (SR-NASDAQ-2017-074) (approving the Midpoint Extended Life Order (“M-ELO”) because it could “create additional and more efficient trading opportunities on the Exchange for investors with longer investment time horizons, including institutional investors, and could provide these investors with an ability to limit the information leakage and the market impact that could result from their orders.”).

The CMO and CMO+PO will be available for voluntary use by all Exchange members. Although the proposal would enable market participants that use CMOs to avoid potentially adverse executions, while causing participants to miss executions to the extent that their incoming Orders trigger removal of CMOs, this treatment is fair. That is, the proposal would facilitate the provision of market-enhancing midpoint liquidity by providing a mechanism by which participants could post such liquidity safely and without fear of adverse executions. Exchange functionality which permits like-minded participants the ability to achieve their objectives in an efficient manner will improve overall execution quality on the market. Moreover, the protections that these Order Types provide are tailored to mitigate the risk of adverse executions, even though the entry of either an incoming Displayed Order larger than a CMO or an incoming spread-crossing Non-Displayed Order larger than a CMO would not necessarily result in an adverse execution in every conceivable circumstance.[20] As the chart below demonstrates, mark-outs are significantly worse after executions against incoming contra-orders in the two scenarios covered by the proposed Rule than they are after executions in other scenarios. This data suggests that the CMO and CMO+PO would, indeed, help participants avoid poor quality executions that would likely occur otherwise.

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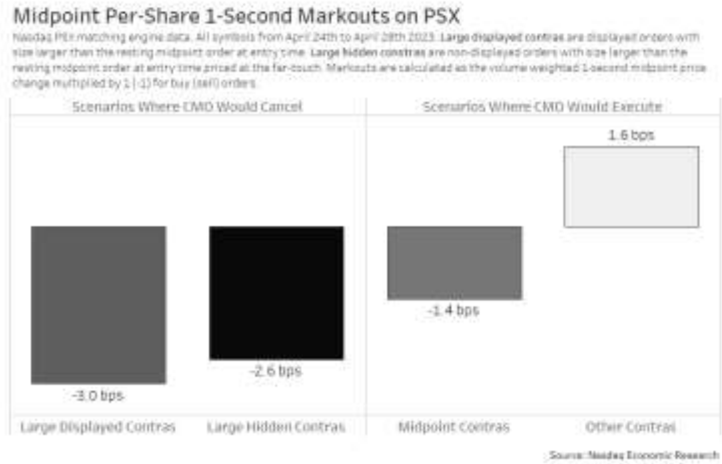
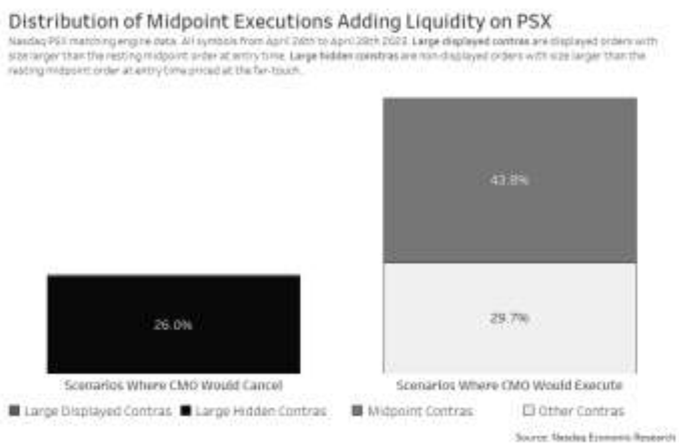
20 Cf. Order Approving a Proposed Rule Change to Add a New Discretionary Limit Order Type Called D-Limit, Securities Exchange Act Release No. 34-89686 (August 26, 2020), 85 FR 54438 (September 1, 2020) (SR-IEX-2019-15) ("D-Limit orders will encourage long term investors to participate in the displayed exchange market by protecting them against one particular strategy employed by short term traders. It is not unfairly discriminatory for an exchange to address that advantage in a narrowly tailored manner that promotes investor protection and the public interest. Accordingly, the Commission concludes that IEX's proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.").



The Exchange also notes that the scenarios in which CMO and CMO+PO would apply constitute only a quarter of all midpoint executions adding liquidity on the Exchange.



Like all other Order Types, the Exchange will conduct real-time surveillance to monitor the use of CMOs and CMO+POs to ensure that such usage is appropriately tied to the intent of the Order Type. Transactions in CMOs and CMO+POs will be reported to the Securities Information Processor and will be provided in the Exchange's proprietary data feed in the same manner as all other transactions occurring on the Exchange, without any new or special indication that it is a CMO or CMO+PO execution. The Exchange believes that doing so is important to ensuring that investors are protected from any market impact that may occur if CMO executions were reported with a special indication.

The Exchange does not believe that the proposed CMO or CMO+PO will negatively affect the quality of the market. To the contrary, the Exchange believes that the addition of CMO and CMO+PO will draw new market participants to the Exchange's transparent and well-regulated market. The CMO and CMO+PO will allow investors an opportunity to find like-minded counterparties at the Midpoint on the Exchange, while also limiting executions users may deem unfavorable and providing opportunities for price improvement. Insofar as the CMO and CMO+PO would provide new options for participants to achieve efficient, high-quality midpoint executions, the CMO and CMO+PO stands to increase participation on the Exchange and to improve the quality of executions on the Exchange.

Lastly, it is consistent with the Act to amend the Exchange's Rule governing Midpoint Pegging, at Rule 3301B(d), to add language stating that "Orders with Midpoint Pegging will be cancelled by the System when a trading halt is declared, and any Orders with Midpoint Pegging entered during a trading halt will be rejected." Such language exists in a corresponding rule of the rulebook of the Exchange's sister exchange, the Nasdaq Stock Market, LLC, at Nasdaq Rule 4703(d), but was mistakenly omitted from Rule 3301B(d). In additional to correcting an inadvertent omission of this language from the Exchange's Rulebook, the proposed text codifies existing Exchange practice and corresponds to participant expectations for the behavior of Orders with Midpoint Pegging during trading halts.

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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.

The Exchange believes that the introduction of the CMO and CMO+PO will draw new market participants to the Exchange while also providing a new option for existing participants that wish to achieve high-quality Midpoint (or better) executions, but do not wish for their

Orders to be subject to a Holding Period (as in M-ELO or M-ELO+CB orders on Nasdaq) or care about their counterparties being subject to the same. To the extent the proposed change is successful in attracting additional market participants or increasing existing participation on the Exchange, the Exchange believes that the proposed change will promote competition among trading venues by making the Exchange a more attractive trading venue for investors and participants.

Additionally, adoption of the CMO and CMO+PO will not burden competition among market participants. The CMO and CMO+PO will be available to all Exchange members and it will be available on an optional basis. Thus, any member that seeks to avail itself of the benefits of a CMO or CMO+PO can choose accordingly. Although the proposal provides potential benefits for investors that select the CMO and CMO+PO, the Exchange believes that all market participants will benefit to the extent that this proposal contributes to a healthy and attractive market that is attentive to the needs of all types of investors.

The proposal also will not adversely impact market participants that choose not to use these Order Types because no changes need to be made to participants' systems to account for it. As discussed above, CMO and CMO+PO executions will be reported the same as other executions, without any new or special indicator.

In any event, the Exchange notes that it operates in a highly competitive market in which market participants can readily choose between competing venues if they deem participation in the Exchange's market is no longer desirable. In such an environment, the Exchange must carefully consider the impact that any change it proposes may have on its participants, understanding that it will likely lose participants to the extent a change is viewed as unfavorable by them. Because competitors are free to modify the incentives and structure of their markets, the Exchange believes that the degree to which modifying the market structure of an individual market may impose any burden on competition is limited. Last, to the extent the proposed change is successful in attracting additional market participants or additional activity by existing participants, the Exchange also believes that the proposed change will promote competition among trading venues by making the Exchange a more attractive trading venue for participants and investors.

The Exchange perceives no competitive impact associated with amending the Exchange's Rule governing Midpoint Pegging, at Rule 3301B(d), to add language stating that "Orders with Midpoint Pegging will be cancelled by the System when a trading halt is declared, and any Orders with Midpoint Pegging entered during a trading halt will be rejected." This proposal merely adds language that had been mistakenly omitted from the Exchange's Rulebook, but which exists in the corresponding rules of the Nasdaq Stock Market, LLC, and codifies existing Exchange practice as to Orders with Midpoint Pegging during a trading halt.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-2023-40 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-PHLX-2023-40. 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 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 a.m. and 3 p.m. Copies of the filing also 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-2023-40 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.[21]

Sherry R. Haywood,

Assistant Secretary.

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[21] 17 CFR 200.30-3(a)(12).