This notice will be published in the **Federal Register**.

**Stacy L. Ruble,**

*Secretary.*

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# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79405; File No. SR–MIAX–2016–44]**

## Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders

November 28, 2016.

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 November 18, 2016, Miami International Securities Exchange LLC ("MIAX" 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 is filing a proposal to amend Exchange Rule 518, Complex Orders.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, 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 amend Exchange Rule 518, Complex Orders, to state that (i) the System[3] will not commence a Complex Auction[4] within a defined time period prior to the end of the trading session as described below; and (ii) the size of an RFR Response (defined below) that is submitted with a size greater than the aggregate auctioned size (described below) will be capped for allocation purposes at the aggregate auctioned size (defined below).

#### Complex Auction Defined Time Period

Certain option classes, as determined by the Exchange and communicated to Members via Regulatory Circular, are eligible to participate in a Complex Auction for possible price improvement.[5] Members may submit Complex Auction-on-Arrival ("cAOA") orders[6] that may initiate a Complex Auction, and the Exchange may determine to automatically submit a Complex Auction-eligible order[7] into a Complex Auction. Upon receipt of a Complex Auction-eligible order or upon an evaluation by the System[8] indicating that there is a Complex Auction-eligible order resting on the Strategy Book,[9] the Exchange may begin the Complex

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[3] The term "System" means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[4] Certain option classes, as determined by the Exchange and communicated to Members via Regulatory Circular, will be eligible to participate in a Complex Auction (an "eligible class"). Upon evaluation as set forth in Exchange Rule 518(c)(5), the Exchange may determine to automatically submit a Complex Auction-eligible order into a Complex Auction. Upon entry into the System or upon evaluation of a complex order resting at the top of the Strategy Book, Complex Auction-eligible orders may be subject to an automated request for responses ("RFR"). *See* Exchange Rule 518(d).

[5] *See id.*

[6] A cAOA order is a complex order designated to be placed into a Complex Auction upon receipt or upon evaluation. Complex orders that are not designated as cAOA will, by default, not initiate a Complex Auction upon arrival, but except as described herein will be eligible to participate in a Complex Auction that is in progress when such complex order arrives or if placed on the Strategy Book may participate in or may initiate a Complex Auction. *See* Exchange Rule 518(b)(2)(i).

[7] A "Complex Auction-eligible order" means a complex order that, as determined by the Exchange, is eligible to initiate or join a Complex Auction based in a variety of factors. *See* Exchange Rule 518(d)(1).

[8] The term "System" means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[9] The "Strategy Book" is the Exchange's electronic book of complex orders and complex Quotes. *See* Exchange Rule 518(a)(17).

Auction process by sending a request for responses ("RFR") message. Members may submit a response to the RFR message (an "RFR Response") during the "Response Time Interval."[10] At the end of the Response Time Interval, Complex Auction-eligible orders (and other complex orders and quotes) may be executed in whole or in part against the best priced contra side interest.[11]

Exchange Rule 518(d)(2) governs the commencement of a Complex Auction. Upon receipt of a Complex Auction-eligible order or upon an evaluation by the System indicating that there is a Complex Auction-eligible order resting on the Strategy Book, the Exchange may begin the Complex Auction process by sending an RFR message to all subscribers to the Exchange's data feeds that deliver RFR messages.

The Exchange proposes to amend Exchange Rule 518(d)(2) by stating that, notwithstanding the foregoing provisions of the rule, the System will not commence a Complex Auction within a defined time period prior to the end of the trading session (the "Defined Time Period") established by the Exchange and communicated to Members via Regulatory Circular. The Defined Time Period shall be at least 100 milliseconds, and may not exceed 10 seconds. The Exchange believes that this proposed flexibility in the duration of the Defined Time Period is necessary because the duration of the Response Time Interval is flexible[12] and must not be able to exceed the Defined Time Period. For example, if the Response Time Interval is 300 milliseconds and the Defined Time Period is 200 milliseconds, a Complex Auction with a 300 millisecond Response Time Interval could commence within 200 milliseconds of the end of the trading session, and the Complex Auction could therefore not be completed. Flexibility in the establishment of the duration of the Defined Time Period would enable the Exchange to make the duration of the Response Time Interval and the Defined Time Period consistent in this regard. The 10-second maximum duration for the Defined Time Period is intended as an outlier to address situations where the Exchange may need to ensure a fair and orderly marketplace during times of extreme

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[10] The "Response Time Interval" means the period of time during which responses to the RFR may be entered. The Exchange will determine the duration of the Response Time Interval, which shall not exceed 500 milliseconds, and will communicate it to Members via Regulatory Circular. *See* Exchange Rule 518(d)(3).

[11] For a complete description of the Complex Auction process, *see* Exchange Rule 518(d).

[12] *See supra* note 10.

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volatility and thus may deem it necessary not to commence Complex Auctions as the end of the trading session approaches.

For consistency, the Exchange is proposing a corresponding amendment to the definition of a cAOA order[13] in Exchange Rule 518(b)(2)(i) by stating that a cAOA order received during the Defined Time Period prior to the end of the trading session (as described in proposed Rule 518(d)(2)) will not initiate a new Complex Auction.

The purpose of this provision is to ensure that Complex Auctions that are commenced on the Exchange can be completed prior to the close of trading. Upon receipt of a Complex Auction-eligible order or upon an evaluation by the System indicating that there is a Complex Auction-eligible order resting on the Strategy Book, the Exchange may begin the Complex Auction process by sending an RFR message, which then begins the Response Time Interval during which Complex Auction responses may be submitted.

The Exchange believes it is necessary to ensure that a Complex Auction will not commence when the trading session would end prior to the end of the Response Time Interval. Thus, any Complex Auction commenced on the Exchange will be completed during the trading session.

Capping the RFR Response Size

The Exchange proposes to amend rules relating to the Complex Auction to limit the size of RFR Responses for trade allocation purposes.

Exchange Rule 518(d)(4), RFR Response, states that RFR Responses must be a Complex Auction-or-Cancel order (a "cAOC order")[14] or a Complex Auction or Cancel eQuote (a "cAOC eQuote").[15] RFR Responses must indicate their size and are firm (*i.e.,* guaranteed at the RFR Response price and size) at the end of the Response Time Interval. The Exchange is proposing to amend Exchange Rule 518(d)(4) to cap the size of RFR

Responses (*i.e.,* cAOC orders and cAOC eQuotes) by stating that an RFR Response with a size greater than the aggregate size of interest at the same price on the same side of the market as the initiating Complex Auction-eligible order (the "aggregate auctioned size")[16] will be capped for allocation purposes at the aggregate auctioned size. Thus, an RFR Response with a size greater than the aggregate auctioned size will be deemed to be for a size that is equal to the aggregate auctioned size.

For consistency, the Exchange is proposing to amend Exchange Rule 518(b)(3), which defines a cAOC order, to state that a cAOC order with a size greater than the aggregate auctioned size will be capped for allocation purposes at the aggregate auctioned size. Additionally, the Exchange is proposing to amend Rule 518, Interpretations and Policies .02, which defines a cAOC eQuote, to state that a cAOC eQuote with a size greater than the aggregate auctioned size (as defined in Rule 518(d)(4)) will be capped for allocation purposes at the aggregate auctioned size.

The purpose of capping the size of RFR Responses is to ensure that the System allocates contracts among participants in the Complex Auction based on the aggregate size of the Complex Auction-eligible order and interest joining the Complex Auction-eligible order being auctioned. Contracts in the Complex Auction are allocated on a pro-rata basis pursuant to Exchange Rule 514(c)(2)[17] among participants in various categories that are ranked in priority order[18] in Rule 518(d)(7).

Capping the size of RFR Responses for purposes of pro-rata allocation is also designed to reduce the possibility that participants could circumvent or "game" the allocation rules through the submission of oversized RFR Responses. In fact, for the same purpose, the Exchange currently caps the size of certain orders in the simple market for allocation purposes. For example, the

System will cap individual responses received during a liquidity refresh pause timer on the opposite side from the initiating order to the size of the initiating order and any same side joiners received during the liquidity refresh pause timer for purposes of pro-rata allocation against the initiating order and any same side joining interest received during the liquidity refresh pause.[19] Also, in the MIAX PRIME Auction for simple orders, an RFR response with a size greater than the size of the Agency Order will be capped at the size of the Agency Order.[20] The Exchange believes that adding the additional language regarding a cap applied to the size of RFR Responses will clarify the manner in which the System allocates contracts at the end of the Complex Auction so that market participants more clearly understand the treatment of their orders and quotes during the Complex Auction process, and will also reduce the impact of potentially manipulative behavior by market participants to alter the pro-rata allocation.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[21] in general, and furthers the objectives of Section 6(b)(5) of the Act[22] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the Exchange's proposal to set a Defined Time Period during which a Complex Auction will not be commenced is designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system and to protect investors and the public interest by ensuring that the System can complete the Complex Auction process before the end of the trading session. This guarantees that investors will receive the full benefit of the Complex Auction process and that Complex auctions on the Exchange will be

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[13] *See supra* note 6.

[14] A cAOC order is a complex limit order used to provide liquidity during a specific Complex Auction with a time in force that corresponds with that event. cAOC orders are not displayed to any market participant, and are not eligible for trading outside of the event. *See* Exchange Rule 518(b)(3).

[15] cAOC eQuote is an eQuote submitted by a Market Maker that is used to provide liquidity during a specific Complex Auction with a time in force that corresponds with the duration of the Complex Auction. cAOC eQuotes will not: (i) Be executed against individual orders and quotes resting on the Simple Order Book; (ii) be eligible to initiate a Complex Auction, but may join a Complex Auction in progress; (iii) rest on the Strategy Book; or (iv) be displayed. *See* Exchange Rule 518, Interpretations and Policies .02(c)(1).

[16] Incoming unrelated complex orders and quotes that are eligible to join a Complex Auction and are received during the Response Time Interval for a Complex Auction-eligible order will join the Complex Auction, will be ranked by price, and will be allocated pursuant to Rule 518(d)(7). *See* Exchange Rule 518(d)(8).

[17] Exchange Rule 514(c)(2), Pro-Rata Allocation, states that under this method, resting quotes and orders on the Book are prioritized according to price. If there are two or more quotes or orders at the best price then the contracts are allocated proportionally according to size (in a pro-rata fashion). If the executed quantity cannot be evenly allocated, the remaining contracts will be distributed one at a time based upon price-size-time priority.

[18] Orders and quotes executed in a Complex Auction are allocated pursuant to Exchange Rule 518(d)(7).

[19] *See* Exchange Rule 515, Interpretations and Policies .03.

[20] See Exchange Rule 515A(a)(2)(i)(G).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

completed prior to the end of the trading session.

The proposed rule change promotes just and equitable principles of trade by capping the size of RFR Responses, which ensures that the system allocates contracts among participants in the Complex Auction based on the actual aggregate size of the Complex Auction-eligible order and interest joining the Complex Auction-eligible order being auctioned.

Furthermore, capping the size of RFR Responses for purposes of pro-rata allocation is designed to prevent fraudulent and manipulative acts and practices by reducing the possibility that participants could circumvent or ''game'' the allocation rules through the submission of an oversized RFR Response. Moreover, the Exchange believes that adding the additional language regarding a cap applied to the size of RFR Responses removes impediments to and perfects the mechanisms of a free and open market and a national market system by clarifying the manner in which the System allocates contracts at the end of the Complex Auction so that market participants more clearly understand the treatment of their orders and quotes during the Complex Auction process.

*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 that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that its proposal to cap the size of RFR Responses enhances competition in the Complex Auction by eliminating the ability of Complex Auction participants to ''game'' the pro-rata allocation, thus encouraging participants to submit competitive RFR Responses and ensuring that the size associated with their RFR Response will be calculated fairly as a percentage of the size associated with RFR Responses submitted to the Complex Auction.

Additionally, the Exchange's proposal to establish a Defined Time Period prior to the end of the trading session within which the Exchange will not commence a Complex Auction is not competitive in nature. This proposal is intended to ensure that the Complex Auction process can be completed once it has begun, and to safeguard the orderliness of the MIAX marketplace at the end of the trading session.

For all the reasons stated, 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, and believes the proposed change will in fact enhance competition.

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

Written comments were neither solicited nor received.

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

Because the 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [23] and Rule 19b–4(f)(6) thereunder.[24]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [25] 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 asked the Commission to waive the 30-day operative delay to allow the proposal to become immediately effective. As discussed above, the Exchange states that the proposal to set a Defined Time Period will help guarantee that Complex Auctions on the Exchange will be completed prior to the end of the trading session. The Exchange also states that its proposal to cap the size of RFR Responses for purposes of pro-rata allocation is designed to reduce the possibility that participants could circumvent or ''game'' the allocation rules through the submission of an oversized RFR Response. In addition, as discussed above, MIAX also caps the size of responses to its PRIME Auction and responses received during a liquidity refresh pause in its simple market. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest

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[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[25] 17 CFR 19b–4(f)(6)(iii).

because the proposed rule change will allow the Exchange to implement the Defined Time Period in its Complex Auction, which the Exchange states will ensure that Complex Auctions begun just prior to the end of the trading session will be completed before the end of the trading session. In addition, the Commission believes that waiving the 30-day operative delay for the Exchange's proposal to cap the size of RFR Responses is consistent with the protection of investors and the public interest because the proposed rule change is consistent with treatment of certain orders in the Exchange's simple market.[26]

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

## 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 email to *rule-comments@sec.gov*. Please include File Number SR–MIAX–2016–44 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–MIAX–2016–44. 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 Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

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

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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2016–44 and should be submitted on or before December 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–28928 Filed 12–1–16; 8:45 am]

**BILLING CODE 8011–01–P**

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–79407; File No. SR–Phlx–2016–114]

**Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Commentary .14 to Rule 3317 (Compliance With Regulation NMS Plan To Implement a Tick Size Pilot)**

November 28, 2016.

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 November 14, 2016, 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 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 amend Commentary .14 to Rule 3317 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot) to provide the SEC with notice of its efforts to re-program its systems to eliminate a re-pricing functionality for certain orders in Test Group Three securities in connection with the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan" or "Pilot").[3]

The text of the proposed rule change is set forth below. Proposed new language is italicized; deleted text is in brackets.

\* \* \* \* \*

**NASDAQ PHLX Rules**

\* \* \* \* \*

**3317. Compliance With Regulation NMS Plan To Implement a Tick Size Pilot**

(a) through (d) No Change.

Commentary: .01–.13 No change.

.14 Until [November 14, 2016] *December 12, 2016,* the treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three securities shall be as follows:

Following entry, and if market conditions allow, a Price to Comply Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Price to Display Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Display Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price.

Following entry, and if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in

accordance with changes to the NBBO or the best price on the Exchange Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

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**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

On September 7, 2016, the Exchange filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change ("Proposal") to adopt paragraph (d) and Commentary .12 to Exchange Rule 3317 to describe changes to system functionality necessary to implement the Plan. The Exchange also proposed amendments to Rule 3317(a) and (c) to clarify how the Trade-at exception may be satisfied. The SEC published the Proposal in the **Federal Register** for notice and comment on September 20, 2016.[4] Phlx subsequently filed three Partial Amendments to clarify aspects of the Proposal. The Commission approved the Proposal, as amended, on October 7, 2016.[5]

In SR–Phlx–2016–92, Phlx had initially proposed a re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols in Group Three securities.[6] Phlx subsequently

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[27] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[4] *See* Securities Exchange Act Release No. 78835 (September 14, 2016), 81 FR 64552 (September 20, 2016) (SR–Phlx–2016–92).

[5] *See* Securities Exchange Act Release No. 79074 (October 7, 2016) (SR–Phlx–2016–92).

[6] As originally proposed, Rule 3317(d)(2) stated that Price to Comply Orders in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price. Rule 3317(d)(3) stated that, if market

Continued