

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="27"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2012"/> - * <input type="text" value="119"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Proposed Rule Change by NASDAQ OMX PHLX LLC.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
			Rule					
Pilot	Extension of Time Period for Commission Action *	Date Expires *	19b-4(f)(1)	19b-4(f)(2)	19b-4(f)(3)	19b-4(f)(4)	19b-4(f)(5)	19b-4(f)(6)
<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

A proposed rule change to modify Phlx's fee schedule governing order execution and routing on its NASDAQ OMX PSX facility.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name *	<input type="text" value="John"/>	Last Name *	<input type="text" value="Yetter"/>
Title *	<input type="text" value="Vice President"/>		
E-mail *	<input type="text" value="john.yetter@nasdaqomx.com"/>		
Telephone *	<input type="text" value="(301) 978-8497"/>	Fax	<input type="text" value="(301) 978-8472"/>

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date	<input type="text" value="10/01/2012"/>
By	<input type="text" value="Edward S. Knight"/>
	(Name *)
	<input type="text" value="Executive Vice President and General Counsel"/>
	(Title *)

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

Edward S Knight,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information (required)

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to modify Phlx’s fee schedule governing order execution and routing on its NASDAQ OMX PSX (“PSX”) facility.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of Phlx pursuant to authority delegated by the Board of Directors of Phlx on July 10, 2012. Phlx staff will advise the Board of Directors of Phlx of any action taken pursuant to delegated authority. No other action by Phlx is necessary for the filing of the rule change. Phlx proposes to implement the proposed rule change on October 1, 2012.

Questions regarding this rule filing may be directed to John M. Yetter, Vice President and Deputy General Counsel, The NASDAQ OMX Group, Inc., 301-978-8497.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

Phlx is proposing to modify its fee schedule governing order execution and routing on PSX. The general purposes of the fee changes are to (i) encourage greater provision of liquidity through PSX by instituting an increase in the rebates paid with respect to liquidity-providing orders, (ii) make certain increases to the fees for accessing liquidity and routing orders, and (iii) increase fees for routing orders to the New York Stock Exchange ("NYSE") to reflect an announced price increase by that exchange.³ All of the changes pertain to securities priced at \$1 or more per share. Phlx is, however, moving the fees governing execution and routing of orders for securities priced at less than \$1 per share to a new paragraph of the fee schedule.

Under the change, PSX will pay a rebate of \$0.0028 per share executed for displayed orders entered through a NASDAQ OMX PSX market participant identifier ("MPID") through which a member organization provides shares of liquidity that represent more than 0.10% of the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities ("Consolidated Volume") during the month. In addition, in recognition of the convergence of trading in which member organizations simultaneously trade different asset classes, Phlx is introducing a pricing incentive to encourage market participants that are active in the Phlx Options Market also to trade on PSX.⁴ Specifically, Phlx will also pay a rebate of

³ See SR-NYSE-2012-50 (September 26, 2012).

⁴ The incentive is similar to pricing incentives in place at the NASDAQ Stock Market with respect to its members that are also active in the NASDAQ Options Market. See NASDAQ Rule 7018.

\$0.0028 per share executed with respect to displayed orders entered through a NASDAQ OMX PSX MPID through which the member organization provides shares of liquidity that represent more than 0.05% of Consolidated Volume during the month; provided that the member organization and any affiliated member organizations⁵ also have an average daily volume during the month of 1,000 or more electronically-delivered and executed customer contracts that add liquidity on Phlx's Options Market. Phlx will pay a rebate of \$0.0026 per share executed with respect to all other displayed orders that provide liquidity, and will pay a rebate of \$0.0010 per share executed with respect to non-displayed orders that provide liquidity. These new rebate provisions replace provisions under which Phlx paid a maximum rebate of \$0.0026 per share executed with respect to minimum life orders and displayed orders with an original size of 2,000 shares or more, but lower rebates with respect to orders for securities listed on NYSE, displayed orders with a smaller size, and non-displayed orders. Under the proposed change, the rebate paid with respect to both displayed and non-displayed orders that provide liquidity will equal or exceed currently available rebates in all cases.

In order to offset the cost of these higher rebates, Phlx is making corresponding changes to the fees charged for accessing liquidity. Specifically, PSX will charge

⁵ For this purpose, member organizations are deemed affiliates if there is at least 75% common ownership of the member organizations. This standard corresponds to standards currently used under the NASDAQ OMX PHLX Pricing Schedule for options. *See, e.g.*, NASDAQ OMX PHLX Pricing Schedule, Chapter II (Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs, indexes and HOLDERS which are Multiply Listed)) (“Specialists and Market Makers are subject to a ‘Monthly Market Maker Cap’ of \$550,000 for equity option transaction fees and QCC Transaction Fees, as defined in this section above. The trading activity of separate Specialist and Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is at least 75% common ownership between the member organizations.”).

\$0.0028 per share executed for orders entered through a NASDAQ OMX PSX MPID through which a member organization provides shares of liquidity that represent more than 0.10% of Consolidated Volume during the month. PSX will also charge \$0.0028 per share executed with respect to the execution on PSX of any order that is designated as eligible for routing, and \$0.0030 per share executed for all other orders that execute on PSX. The discount for routable orders, as compared with non-routable orders, is designed to provide incentives for member organizations to make use of PSX's routing services. By contrast, PSX had previously charged \$0.0019 per share executed for orders in securities listed on NSYE and \$0.0027 per share executed for other orders. The increases are necessary to ensure that Phlx covers the costs associated with the increased rebates it is offering.

With respect to fees for executions on other markets of routed orders, PSX is adopting minor increases in the fees charged for certain orders that execute on the other trading venues. Thus, with respect to PSTG and PSCN orders that execute on venues other than NYSE or NASDAQ OMX BX, and with respect to PTFY and PCRT orders that execute at the NASDAQ Stock Market, Phlx is increasing the fee from \$0.0027 per share executed to \$0.0028 per share executed. These changes will ensure that routable orders that execute at other venues pay a fee that is consistent with the fee paid with respect to such orders when they execute at PSX.

Finally, to reflect recent increases in the fees charged by NYSE with respect to orders routed to it by PSX, Phlx is raising the fee for PSTG and PSCN orders routed to NYSE from \$0.0023 per share executed to \$0.0025 per share executed; the fee for PMOP orders routed to NYSE from \$0.0025 per share executed to \$0.0027 per share executed;

and the fee for PTFY orders routed to NYSE from \$0.0022 per share executed to \$0.0024 per share executed.

b. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Sections 6(b)(4) and (5) of the Act,⁷ 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 or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated member organizations are subject to the same fee structure, and access to Phlx is offered on fair and non-discriminatory terms.

The Exchange believes that the proposed fees for accessing liquidity are reasonable because they are consistent with the limitations imposed by SEC Rule 610⁸ on access fees. The Exchange further believes that the proposed access fees are consistent with an equitable allocation of fees, in that they are set at levels that allow the Exchange to pay a credit to liquidity providers. Because the payment of such credits encourages liquidity providers to post orders in PSX, they also benefit liquidity accessors by increasing the likelihood of execution at or near the inside market. Phlx further believes that the discounted access fees for orders entered through MPIDs that satisfy a volume requirement are not unreasonably discriminatory because they are designed to provide

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ 17 CFR 242.610.

incentives to member organizations to increase their participation in PSX and are consistent in their purpose with similar volume-based pricing incentives offered by numerous other exchanges. Similarly, Phlx believes that the discounted fee for orders that are eligible for routing is not unreasonably discriminatory because it is a reasonable means of encouraging member organizations to make use of PSX's routing services but does not differ to a great extent from the fees otherwise charged for order execution. Finally, PSX believes that these discounts are consistent with an equitable allocation of fees because they are designed to serve the appropriate purposes of encouraging greater use of PSX's execution and routing facilities but do not deviate to an unreasonable extent from the access fee otherwise charged by PSX.

Phlx further believes that the proposed rebates for liquidity providers are reasonable because they are set at levels that are equal to or higher than the rebates currently offered, and are designed to attract greater numbers of liquidity-providing orders to PSX. In addition, Phlx believes that the proposed rebates reflect an equitable allocation of fees because they are set at levels that do not deviate significantly from the access fees charged by PSX. Phlx further believes that the proposed higher rebates for displayed liquidity provided through MPIDs that satisfy a volume requirement are not unreasonably discriminatory because they are designed to provide incentives to member organizations to increase their participation in PSX and are consistent in their purpose with similar volume-based pricing incentives offered by numerous other exchanges. Similarly, Phlx believes that the proposed higher rebate with respect to displayed liquidity provided by certain member organizations that are active in both PSX and Phlx's Options Market is not unreasonably discriminatory because it is responsive to the

convergence of trading in which member organization simultaneously trade different asset classes within a single strategy. Phlx also notes that cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other. Accordingly, pricing incentives that encourage market participant activity in both markets recognize that activity in the options markets may also support price discovery and liquidity provision in PSX. This proposed rebate is also not unreasonably discriminatory because the Exchange is offering an alternative means of earning an identical rebate that does not require participation in Phlx's Options Market. Phlx further believes that the proposal to pay higher rebates with respect to displayed orders than with respect to non-displayed orders is not unreasonably discriminatory because Phlx believes that it is reasonable to use pricing incentives to encourage the use of displayed orders, which contribute more to price discovery and market transparency, than non-displayed orders.

The proposed changes to fees for routing orders to NYSE are reasonable because they reflect the increase in the fee that will be charged by NYSE to Phlx with respect to such orders. The change is consistent with an equitable allocation of fees because it will bring the economic attributes of routing orders to NYSE in line with the cost of executing orders there. Finally, the change is not unfairly discriminatory because it solely applies to member organizations that opt to route orders to NYSE.

The other proposed increases in routing fees are reasonable because they are very small in magnitude (\$0.0001 per share executed for affected orders). The changes are consistent with an equitable allocation of fees because the resulting fees are consistent with the fee charged for the execution of routable orders at PSX. Thus, member

organizations are encouraged to use routable orders through a favorable execution rate and the increased likelihood of finding liquidity at PSX that may be promoted through the higher liquidity provider rebates adopted through the proposal. Phlx believes that it is equitable under these circumstances to charge a fee for routing the orders to other venues that is more consistent with PSX's own execution fee. Finally, the change is not unreasonably discriminatory because it applies solely to member organizations that opt to use the routing strategies subject to the price change.

Phlx also 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. In such an environment, Phlx 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. Phlx believes that the proposed rule change reflects this competitive environment because it is designed to create pricing incentives for greater use of PSX's trading and routing services.

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

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, member organizations may readily opt to disfavor Phlx's execution and routing services if they believe that alternatives offer them better value. The proposed change is designed to enhance competition by using pricing incentives to encourage greater use of PSX's trading and routing services.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁹ Phlx has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission. However, the proposed liquidity provider rebate tier for member organizations that are active in both PSX and Phlx's Options Market is similar to pricing incentives adopted by the NASDAQ Stock Market with respect to its member organizations that are active in both the NASDAQ Stock Market and the NASDAQ Options Market. See NASDAQ Rule 7018. The change also reflects the fees charged by NYSE with respect to orders routed to it by PSX.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

5. Text of the proposed rule change.

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-Phlx-2012-119)

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Phlx's Fee Schedule Governing Order Execution on its NASDAQ OMX PSX facility

October __, 2012

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 October 1, 2012, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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

Phlx proposes to a modify Phlx's fee schedule governing order execution and routing through its NASDAQ OMX PSX ("PSX") facility. Phlx will implement the proposed change on October 1, 2012. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/>, at Phlx'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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

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

1. Purpose

Phlx is proposing to modify its fee schedule governing order execution and routing on PSX. The general purposes of the fee changes are to (i) encourage greater provision of liquidity through PSX by instituting an increase in the rebates paid with respect to liquidity-providing orders, (ii) make certain increases to the fees for accessing liquidity and routing orders, and (iii) increase fees for routing orders to the New York Stock Exchange ("NYSE") to reflect an announced price increase by that exchange.³ All of the changes pertain to securities priced at \$1 or more per share. Phlx is, however, moving the fees governing execution and routing of orders for securities priced at less than \$1 per share to a new paragraph of the fee schedule.

Under the change, PSX will pay a rebate of \$0.0028 per share executed for displayed orders entered through a NASDAQ OMX PSX market participant identifier ("MPID") through which a member organization provides shares of liquidity that represent more than 0.10% of the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities ("Consolidated Volume") during the month. In addition, in recognition of the convergence of trading in which member organizations simultaneously trade different asset classes, Phlx is

³ See SR-NYSE-2012-50 (September 26, 2012).

introducing a pricing incentive to encourage market participants that are active in the Phlx Options Market also to trade on PSX.⁴ Specifically, Phlx will also pay a rebate of \$0.0028 per share executed with respect to displayed orders entered through a NASDAQ OMX PSX MPID through which the member organization provides shares of liquidity that represent more than 0.05% of Consolidated Volume during the month; provided that the member organization and any affiliated member organizations⁵ also have an average daily volume during the month of 1,000 or more electronically-delivered and executed customer contracts that add liquidity on Phlx's Options Market. Phlx will pay a rebate of \$0.0026 per share executed with respect to all other displayed orders that provide liquidity, and will pay a rebate of \$0.0010 per share executed with respect to non-displayed orders that provide liquidity. These new rebate provisions replace provisions under which Phlx paid a maximum rebate of \$0.0026 per share executed with respect to minimum life orders and displayed orders with an original size of 2,000 shares or more, but lower rebates with respect to orders for securities listed on NYSE, displayed orders with a smaller size, and non-displayed orders. Under the proposed change, the rebate

⁴ The incentive is similar to pricing incentives in place at the NASDAQ Stock Market with respect to its members that are also active in the NASDAQ Options Market. See NASDAQ Rule 7018.

⁵ For this purpose, member organizations are deemed affiliates if there is at least 75% common ownership of the member organizations. This standard corresponds to standards currently used under the NASDAQ OMX PHLX Pricing Schedule for options. See, e.g., NASDAQ OMX PHLX Pricing Schedule, Chapter II (Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs, indexes and HOLDERS which are Multiply Listed)) (“Specialists and Market Makers are subject to a ‘Monthly Market Maker Cap’ of \$550,000 for equity option transaction fees and QCC Transaction Fees, as defined in this section above. The trading activity of separate Specialist and Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is at least 75% common ownership between the member organizations.”).

paid with respect to both displayed and non-displayed orders that provide liquidity will equal or exceed currently available rebates in all cases.

In order to offset the cost of these higher rebates, Phlx is making corresponding changes to the fees charged for accessing liquidity. Specifically, PSX will charge \$0.0028 per share executed for orders entered through a NASDAQ OMX PSX MPID through which a member organization provides shares of liquidity that represent more than 0.10% of Consolidated Volume during the month. PSX will also charge \$0.0028 per share executed with respect to the execution on PSX of any order that is designated as eligible for routing, and \$0.0030 per share executed for all other orders that execute on PSX. The discount for routable orders, as compared with non-routable orders, is designed to provide incentives for member organizations to make use of PSX's routing services. By contrast, PSX had previously charged \$0.0019 per share executed for orders in securities listed on NSYE and \$0.0027 per share executed for other orders. The increases are necessary to ensure that Phlx covers the costs associated with the increased rebates it is offering.

With respect to fees for executions on other markets of routed orders, PSX is adopting minor increases in the fees charged for certain orders that execute on the other trading venues. Thus, with respect to PSTG and PSCN orders that execute on venues other than NYSE or NASDAQ OMX BX, and with respect to PTFY and PCRT orders that execute at the NASDAQ Stock Market, Phlx is increasing the fee from \$0.0027 per share executed to \$0.0028 per share executed. These changes will ensure that routable orders that execute at other venues pay a fee that is consistent with the fee paid with respect to such orders when they execute at PSX.

Finally, to reflect recent increases in the fees charged by NYSE with respect to orders routed to it by PSX, Phlx is raising the fee for PSTG and PSCN orders routed to NYSE from \$0.0023 per share executed to \$0.0025 per share executed; the fee for PMOP orders routed to NYSE from \$0.0025 per share executed to \$0.0027 per share executed; and the fee for PTFY orders routed to NYSE from \$0.0022 per share executed to \$0.0024 per share executed.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Sections 6(b)(4) and (5) of the Act,⁷ 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 or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated member organizations are subject to the same fee structure, and access to Phlx is offered on fair and non-discriminatory terms.

The Exchange believes that the proposed fees for accessing liquidity are reasonable because they are consistent with the limitations imposed by SEC Rule 610⁸ on access fees. The Exchange further believes that the proposed access fees are consistent with an equitable allocation of fees, in that they are set at levels that allow the Exchange to pay a credit to liquidity providers. Because the payment of such credits encourages

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ 17 CFR 242.610.

liquidity providers to post orders in PSX, they also benefit liquidity accessors by increasing the likelihood of execution at or near the inside market. Phlx further believes that the discounted access fees for orders entered through MPIDs that satisfy a volume requirement are not unreasonably discriminatory because they are designed to provide incentives to member organizations to increase their participation in PSX and are consistent in their purpose with similar volume-based pricing incentives offered by numerous other exchanges. Similarly, Phlx believes that the discounted fee for orders that are eligible for routing is not unreasonably discriminatory because it is a reasonable means of encouraging member organizations to make use of PSX's routing services but does not differ to a great extent from the fees otherwise charged for order execution. Finally, PSX believes that these discounts are consistent with an equitable allocation of fees because they are designed to serve the appropriate purposes of encouraging greater use of PSX's execution and routing facilities but do not deviate to an unreasonable extent from the access fee otherwise charged by PSX.

Phlx further believes that the proposed rebates for liquidity providers are reasonable because they are set at levels that are equal to or higher than the rebates currently offered, and are designed to attract greater numbers of liquidity-providing orders to PSX. In addition, Phlx believes that the proposed rebates reflect an equitable allocation of fees because they are set at levels that do not deviate significantly from the access fees charged by PSX. Phlx further believes that the proposed higher rebates for displayed liquidity provided through MPIDs that satisfy a volume requirement are not unreasonably discriminatory because they are designed to provide incentives to member organizations to increase their participation in PSX and are consistent in their purpose

with similar volume-based pricing incentives offered by numerous other exchanges. Similarly, Phlx believes that the proposed higher rebate with respect to displayed liquidity provided by certain member organizations that are active in both PSX and Phlx's Options Market is not unreasonably discriminatory because it is responsive to the convergence of trading in which member organization simultaneously trade different asset classes within a single strategy. Phlx also notes that cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other. Accordingly, pricing incentives that encourage market participant activity in both markets recognize that activity in the options markets may also support price discovery and liquidity provision in PSX. This proposed rebate is also not unreasonably discriminatory because the Exchange is offering an alternative means of earning an identical rebate that does not require participation in Phlx's Options Market. Phlx further believes that the proposal to pay higher rebates with respect to displayed orders than with respect to non-displayed orders is not unreasonably discriminatory because Phlx believes that it is reasonable to use pricing incentives to encourage the use of displayed orders, which contribute more to price discovery and market transparency, than non-displayed orders.

The proposed changes to fees for routing orders to NYSE are reasonable because they reflect the increase in the fee that will be charged by NYSE to Phlx with respect to such orders. The change is consistent with an equitable allocation of fees because it will bring the economic attributes of routing orders to NYSE in line with the cost of executing orders there. Finally, the change is not unfairly discriminatory because it solely applies to member organizations that opt to route orders to NYSE.

The other proposed increases in routing fees are reasonable because they are very small in magnitude (\$0.0001 per share executed for affected orders). The changes are consistent with an equitable allocation of fees because the resulting fees are consistent with the fee charged for the execution of routable orders at PSX. Thus, member organizations are encouraged to use routable orders through a favorable execution rate and the increased likelihood of finding liquidity at PSX that may be promoted through the higher liquidity provider rebates adopted through the proposal. Phlx believes that it is equitable under these circumstances to charge a fee for routing the orders to other venues that is more consistent with PSX's own execution fee. Finally, the change is not unreasonably discriminatory because it applies solely to member organizations that opt to use the routing strategies subject to the price change.

Phlx also 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. In such an environment, Phlx 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. Phlx believes that the proposed rule change reflects this competitive environment because it is designed to create pricing incentives for greater use of PSX's trading and routing services.

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

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, member organizations may readily opt to disfavor Phlx's execution and routing services if they

believe that alternatives offer them better value. The proposed change is designed to enhance competition by using pricing incentives to encourage greater use of PSX's trading and routing services.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁹ 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

⁹ 15 U.S.C. 78s(b)(3)(a)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2012-119 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2012-119. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2012-119, 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.¹⁰

Kevin M. O'Neill
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

The text of the proposed rule change is below. Proposed new language is underlined; deletions are bracketed.

NASDAQ OMX PHLX LLC PRICING SCHEDULE

* * * * *

VIII. NASDAQ OMX PSX FEES

* * * * *

Order Execution and Routing

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

Charge to member organization entering order that executes in NASDAQ OMX PSX:	[\$0.0019 per share executed for securities listed on the New York Stock Exchange ("NYSE") that are priced at \$1 or more per share]
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\$0.0028 per share executed for orders entered through a NASDAQ OMX PSX market participant identifiers ("MPID") through which the member organization provides shares of liquidity that represent more than 0.10% of the total consolidated volume reported to all consolidated transactions reporting plans by all exchanges and trade reporting facilities ("Consolidated Volume") during the month

\$0.0028 per share executed for an order that is designated as eligible for routing

[\$0.0027] \$0.0030 per share executed for other orders
[securities priced at \$1 or more

per share]

[0.20% of the total transaction cost for securities priced at less than \$1 per share]

Credit to member organization providing liquidity through the NASDAQ OMX PSX System:

Displayed order [with an original order size of 2,000 or more shares*]

\$0.0028 per share executed for orders entered through a NASDAQ OMX PSX MPID through which the member organization provides shares of liquidity that represent more than 0.10% of Consolidated Volume during the month

\$0.0028 per share executed for orders entered through a NASDAQ OMX PSX MPID through which the member organization provides shares of liquidity that represent more than 0.05% of Consolidated Volume during the month; provided that the member organization and any affiliated member organizations* also have an average daily volume during the month of 1,000 or more electronically-delivered and executed customer contracts that add liquidity on Phlx's Options Market

[\$0.0018 per share executed for securities listed on NYSE that are priced at \$1 or more per share]

\$0.0026 per share executed for other orders [securities priced at \$1 or more per share]

[\$0 for securities priced at less than \$1.00 per share]

[Displayed order with an original order size of less than 2,000 shares*]

[\$0.0016 per share executed for securities listed on NYSE that are priced at \$1 or more per share]

[\$0.0024 per share executed for other securities priced at \$1 or more per share]

[\$0 for securities priced at less than \$1.00 per share]

[Minimum Life Order]

[\$0.0018 per share executed for securities listed on NYSE that are priced at \$1 or more per share]

[\$0.0026 per share executed for other securities priced at \$1 or more per share]

[\$0 for securities priced at less than \$1.00 per share]

Non-Displayed Order

[\$0.0005 per share executed for securities listed on NYSE that are priced at \$1 or more per share]

\$0.0010 per share executed [for other securities priced at \$1 or more per share]

[\$0 for securities priced at less than \$1.00 per share]

Charge to member organization entering PSTG or PSCN order that executes in a venue other than the NASDAQ OMX PSX System [for securities priced at \$1 or more per share]:

[\$0.0023] \$0.0025 per share executed at NYSE

Credit of \$0.0014 per share executed at NASDAQ OMX BX

[\$0.0027] \$0.0028 per share executed in other venues

Charge to member organization entering PMOP order that executes in a venue other than the NASDAQ OMX PSX System [for securities priced at \$1 or

[\$0.0025] \$0.0027 per share executed at NYSE

\$0.0031 per share executed at

more per share]:	venues other than NYSE
Charge to member organization entering PTFY order that executes in a venue other than the NASDAQ OMX PSX System [for securities priced at \$1 or more per share]:	[\$0.0022] <u>\$0.0024</u> per share executed at NYSE
	\$0.0005 per share executed at venues other than NYSE, NASDAQ or NASDAQ OMX BX
	[\$0.0027] <u>\$0.0028</u> per share executed at NASDAQ
	Credit of \$0.0014 per share executed at NASDAQ OMX BX
Charge to member organization entering PCRT order that executes in a venue other than the NASDAQ OMX PSX System [for securities priced at \$1 or more per share]:	[\$0.0027] <u>\$0.0028</u> per share executed at NASDAQ
	Credit of \$0.0014 per share executed at NASDAQ OMX BX
[Charge to member organization entering order that executes in a venue other than the NASDAQ OMX PSX System for securities priced at less than \$1 per share:]	[0.3% of the total transaction cost]

For purposes of determining average daily volume hereunder, any day that the market is not open for the entire trading day will be excluded from such calculation.

*[An order will be treated as the original order if it is decremented due to executions. However, orders that are modified by the PSX Participant entering the order or by System processes other than execution and decrementation will be treated as a new order.] For purposes of this provision, member organizations shall be deemed affiliates if there is at least 75% common ownership of the member organizations.

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

<u>Charge to member organization entering order that executes in NASDAQ OMX PSX:</u>	<u>0.20% of the total transaction cost</u>
<u>Credit to member organization providing liquidity through the NASDAQ OMX PSX System:</u>	<u>\$0</u>
<u>Charge to member organization entering order that executes in a venue other than the NASDAQ OMX PSX System:</u>	<u>0.3% of the total transaction cost</u>

[(b)] (c) Excess Order Fee

(1) – (4) No change.

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