

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of * 25	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2013 - * 125	Amendment No. (req. for Amendments *)
Filing by NASDAQ OMX PHLX LLC. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="Relating to Routing Fees"/>				
<b>Contact Information</b>				
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 action.				
First Name *	<input type="text" value="Angela"/>		Last Name *	<input type="text" value="Dunn"/>
Title *	<input type="text" value="Associate General Counsel"/>			
E-mail *	<input type="text" value="angela.dunn@nasdaqomx.com"/>			
Telephone *	<input type="text" value="(215) 496-5692"/>	Fax	<input type="text"/>	
<b>Signature</b>				
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.				
(Title *)				
Date	<input type="text" value="12/31/2013"/>	<input type="text" value="Executive Vice President and General Counsel"/>		
By	<input type="text" value="Edward S. Knight"/>	<input type="text"/>		
(Name *)				
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.				
<input type="button" value="Persona Not Validated - 1383935917270"/>				

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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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 \***

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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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, security-based swap submission, or advance notice 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**

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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**

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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 the Proposed Rule Change

(a) NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to amend Section V of the Pricing Schedule entitled “Routing Fees.”

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on January 2, 2014.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of applicable portion of the Exchange’s Pricing Schedule is attached hereto 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 the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on July 17, 2013. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to Angela Saccomandi Dunn, Associate General Counsel, at (215) 496-5692.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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

The purpose of this filing is to amend the Routing Fees in Section V of the Pricing Schedule in order to continue to incentivize members to direct Customer orders to the Exchange.

Today, the Exchange assesses a Non-Customer a \$0.95 per contract Routing Fee to any options exchange. The Customer<sup>3</sup> Routing Fee for option orders routed to The NASDAQ Options Exchange LLC (“NOM”) is a \$0.05 per contract Fixed Fee in addition to the actual transaction fee assessed. The Customer Routing Fee for option orders routed to NASDAQ OMX BX, Inc. (“BX Options”) is \$0.00. The Customer Routing Fee for option orders routed to all other options exchanges<sup>4</sup> (excluding NOM and BX Options) is a fixed fee of \$0.20 per contract (“Fixed Fee”) in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee is \$0.00 per contract. For all Routing Fees, the transaction fee will continue to be based on the away market’s actual transaction fee or rebate for particular market participants and, in the case that there is no transaction fee or rebate assessed by the away market, the Fixed Fee.

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<sup>3</sup> The term “Customer” applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Rule 1000(b)(14)).

<sup>4</sup> Including BATS Exchange, Inc. (“BATS”), BOX Options Exchange LLC (“BOX”), the Chicago Board Options Exchange, Incorporated (“CBOE”), C2 Options Exchange, Incorporated (“C2”), International Securities Exchange, LLC (“ISE”), the Miami International Securities Exchange, LLC (“MIAX”), NYSE Arca, Inc. (“NYSE Arca”), NYSE MKT LLC (“NYSE Amex”) and Topaz Exchange, LLC (“Gemini”).

With respect to the fixed costs, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC (“NOS”), a member of the Exchange and the Exchange’s exclusive order router.<sup>5</sup> Each time NOS routes an order to an away market, NOS is charged a clearing fee<sup>6</sup> and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees (“ORFs”) and technical costs associated with routing options. The Exchange assesses the actual away market fee at the time that the order was entered into the Exchange’s trading system. This transaction fee would be calculated on an order-by-order basis since different away markets charge different amounts.

Today, a member organization qualifying for a Tier 2, 3 or 4 rebate in the Customer Rebate Program in Section B of the Pricing Schedule is entitled to receive a credit equal to the applicable Fixed Fee plus \$0.05 per contract, unless the away market transaction fee is \$0.00 or the away market pays a rebate, in which case the member organization is entitled to receive a credit equal to the applicable Fixed Fee. The Exchange proposes to amend the Routing Fees to state that a member organization that

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<sup>5</sup> In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish NOS, a member of the Exchange, as the Exchange’s exclusive order router. See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). NOS is utilized by the Exchange’s fully automated options trading system, PHLX XL<sup>®</sup>.

<sup>6</sup> The Options Clearing Corporation (“OCC”) assesses \$0.01 per contract side.

qualifies (1) for a Tier 2, 3, 4 or 5 rebate in the Customer Rebate Program in Section B of the Pricing Schedule; and (2) *routes away more than 5,000 Customer contracts per day in a given month to an away market* is entitled to receive a credit equal to the applicable Fixed Fee plus \$0.05 per contract, unless the away market transaction fee is \$0.00 or the away market pays a rebate, in which case the member organization is entitled to receive a credit equal to the applicable Fixed Fee.

The Exchange recently added a new tier to the Customer Rebate Program.<sup>7</sup> The Exchange desires to offer the credit to member organizations that qualify for a Tier 2, 3, 4 or 5 rebate in the Customer Rebate Program going forward. The Exchange added a second requirement which requires the member organization to route away more than 5,000 Customer contracts per day in a given month to receive the credit because the Exchange believes that the 5,000 threshold will reward member organizations that route a certain amount of Customer orders to the Exchange by providing them a credit in the event that those contracts are not executed at Phlx.<sup>8</sup> The 5,000 threshold represents what the Exchange believes is a reasonable amount of Customer contracts to warrant the receipt of the credit toward fees. As a result of this added criteria, some member organizations that are currently receiving a credit may no longer receive a credit if they do not route away more than 5,000 Customer contracts per day in a given month. These

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<sup>7</sup> See SR-Phlx-2013-130 (not yet published).

<sup>8</sup> Certain Customer contracts which are executed on Phlx are entitled to the Customer Rebate Program rebates in Section B of the Pricing Schedule. Customer rebates are paid on Customer Rebate Tiers in Section B of the Pricing Schedule according to categories (A or B). The Customer Rebate Tiers are calculated by totaling Customer volume in Multiply Listed Options (including SPY) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o) in a month.

member organizations would continue to qualify for a Customer rebate if they transacted the requisite amount of Customer orders on the Exchange as specified in the Customer Rebate Program. The credit only applies to orders routed away from the Exchange and would now only be offered to member organizations that qualify for a Tier 2, 3, 4 or 5 rebate in the Customer Rebate Program and have more than 5,000 Customer contracts routed to an away market per day in a given month.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act<sup>10</sup> 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.

The Exchange believes that the addition of the criteria that a member organization must route more than 5,000 Customer contracts per day in a given month to an away market, in addition to qualifying for Tiers 2, 3, 4 and now 5, is reasonable because the Exchange is intending to provide a credit to member organizations that qualify for a Customer rebate and route away a certain amount of volume. The addition of Tier 5 reflects a recent amendment to the Customer Rebate Program. Today, all member organizations that qualify for a Customer rebate tier which pays a rebate are eligible for the credit. The requirement that a member organization qualify for a Tier 2, 3, 4 or 5

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4), (5).

Customer rebate should incentivize member organizations to continue to send Customer orders to Phlx by offering the credit in the event a certain amount of those orders are not filled on the Exchange and routed to an away market. By offering member organizations a credit toward the cost of routing to an away market with the additional volume requirements attached, the Exchange is seeking to encourage market participants to transact a greater number of Customer orders on Phlx which liquidity benefits all market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. In addition, the credit toward Customer Routing Fees is in addition to the Customer rebate received for the qualifying Customer Rebate Tier.

The Exchange is now adding a new criteria, that all member organizations that qualify for a Customer rebate tier which pays a rebate are eligible for a credit provided the member organization also routes away more than 5,000 Customer contracts per day in a given month to an away market. The 5,000 Customer contracts represents a significant amount of volume to warrant a credit to reduce fees for member organizations that were unable to execute their Customer orders on the Exchange. It is important to note that when orders are routed to an away market they are routed based on price first.<sup>11</sup> Further,

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<sup>11</sup> PHLX XL will route orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) ("NBBO") price. See Rule 1080(m). The PHLX XL II system will contemporaneously route an order marked as an Intermarket Sweep Order ("ISO") to each away market disseminating prices better than the Exchange's price, for the lesser of: (a) the disseminated size of such away markets, or (b) the order size and, if order size remains after such routing, trade at the Exchange's disseminated bid or offer up to its disseminated size. If contracts still remain unexecuted



market participants may submit orders to the Exchange as ineligible for routing or “DNR” to avoid Routing Fees.<sup>12</sup> The Exchange believes it is reasonable to apply the credit only when a member organization has routed away a certain number of Customer orders, in this case 5,000 Customer orders per day, particularly since the member may chose not to have their orders routed. Despite the fact that the additional criteria may prevent some member organizations that receive the credit today from receiving it in the future, the Exchange believes that this added incentive is reasonable because it would impact those members that are routing away a certain amount of Customer orders and incurring higher Routing Fees. Member organizations will continue to direct their Customer orders to Phlx in order to obtain the applicable Customer rebate offered to qualifying orders through the Customer Rebate Program. Only in the instance that those orders are not filled, and the member organization has not indicated that the orders should be returned, will those orders be routed to an away market. At the time the order is entered, the member organization submitting the order does not know if the order will be filled on Phlx or routed away. The Exchange believes that it is reasonable to credit member organizations that qualify for a Tier 2, 3, 4 or 5 Customer rebate and that have more than 5,000 Customer contracts per day in a given month routed to an away market, because the credit will compensate those members for Routing Fees which are incurred when routing that quantity of Customer orders to an away market.

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after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the PHLX XL II system will not route the order to the locking or crossing market center, with some exceptions noted in Rule 1080(m).

<sup>12</sup> See Rule 1066(h) (Certain Types of Orders Defined) and 1080(b)(i)(A) (PHLX XL and PHLX XL II).

The Exchange believes that the addition of Tier 5 to the first qualifying criteria is equitable and not unfairly discriminatory because the Exchange intends to continue to offer the credit to member organizations that are sending a certain amount of Customer volume to the Exchange which qualifies for a Customer rebate. Any market participant that transacts Customer orders may qualify for a Customer rebate provided they transact a qualifying number of Customer contracts. Further, the Exchange believes that the addition of the second criteria that a member organization must route more than 5,000 Customer contracts per day in a given month to an away market is equitable and not unfairly discriminatory because the Exchange will apply the second criteria (more than 5,000 Customer contracts per day routed to an away market) to all market participants in a uniform manner.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Customer Rebate Program in Section B of the Pricing Schedule seeks to encourage Customer order flow to be directed to the Exchange, which order flow benefits all market participants. All market participants are eligible to qualify for a Customer Rebate. Further, the Exchange will continue to offer the credit to all member organizations that qualify for certain Customer rebates (Tiers 2, 3, 4 or 5) and route away a certain amount of volume. The Exchange believes that offering member organizations that qualify for a Tier 2, 3, 4 or 5 Customer rebate, and that route more than 5,000 Customer contracts per day in a month to an away market, a credit does not impose an

undue burden on competition, but rather promotes competition on the Exchange and encourages members to direct Customer orders to Phlx.

The Exchange does not believe that the added criteria that member organizations that route more than 5,000 Customer contracts to an away market receive the credit will impose a burden on competition because member organizations will continue to direct their Customer orders to Phlx in order to obtain the applicable Customer rebate offered to qualifying orders through the Customer Rebate Program. If those Customer orders are not filled and the member organization has not indicated that the orders should be returned, the Customer orders will be routed to an away market and may be applicable for the credit. The member organization that submits those Customer orders to the Exchange is unaware at that time the order is submitted if the order will be filled on Phlx or routed. For this reason, the Exchange does not believe that the added criteria will impose an undue burden on competition.

Market participants may submit orders to the Exchange as ineligible for routing or “DNR” to avoid Routing Fees.<sup>13</sup> It is important to note that when orders are routed to an away market they are routed based on price first.<sup>14</sup> Today, other options exchanges also assess similar fees to recoup costs incurred when routing orders to away markets.<sup>15</sup>

5. 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.

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<sup>13</sup> See note 12.

<sup>14</sup> See note 11.

<sup>15</sup> See Chicago Board of Options Exchange, Incorporated's Fee Schedule. See NYSE Amex's Fee Schedule.

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,<sup>16</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed 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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. Applicable portion of the Exchange's Pricing Schedule.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2013-125)

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 31, 2013, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Section V of the Pricing Schedule entitled “Routing Fees.”

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on January 2, 2014.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

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

1. Purpose

The purpose of this filing is to amend the Routing Fees in Section V of the Pricing Schedule in order to continue to incentivize members to direct Customer orders to the Exchange.

Today, the Exchange assesses a Non-Customer a \$0.95 per contract Routing Fee to any options exchange. The Customer<sup>3</sup> Routing Fee for option orders routed to The NASDAQ Options Exchange LLC (“NOM”) is a \$0.05 per contract Fixed Fee in addition to the actual transaction fee assessed. The Customer Routing Fee for option orders routed to NASDAQ OMX BX, Inc. (“BX Options”) is \$0.00. The Customer Routing Fee for option orders routed to all other options exchanges<sup>4</sup> (excluding NOM and BX

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<sup>3</sup> The term “Customer” applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Rule 1000(b)(14)).

<sup>4</sup> Including BATS Exchange, Inc. (“BATS”), BOX Options Exchange LLC (“BOX”), the Chicago Board Options Exchange, Incorporated (“CBOE”), C2 Options Exchange, Incorporated (“C2”), International Securities Exchange, LLC (“ISE”), the Miami

Options) is a fixed fee of \$0.20 per contract (“Fixed Fee”) in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee is \$0.00 per contract. For all Routing Fees, the transaction fee will continue to be based on the away market’s actual transaction fee or rebate for particular market participants and, in the case that there is no transaction fee or rebate assessed by the away market, the Fixed Fee.

With respect to the fixed costs, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC (“NOS”), a member of the Exchange and the Exchange’s exclusive order router.<sup>5</sup> Each time NOS routes an order to an away market, NOS is charged a clearing fee<sup>6</sup> and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees (“ORFs”) and technical costs associated with routing options. The Exchange assesses the actual away market fee at the time that the order was entered into the Exchange’s trading system. This transaction fee would be calculated on an order-by-order basis since different away markets charge different amounts.

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International Securities Exchange, LLC (“MIAX”), NYSE Arca, Inc. (“NYSE Arca”), NYSE MKT LLC (“NYSE Amex”) and Topaz Exchange, LLC (“Gemini”).

<sup>5</sup> In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish NOS, a member of the Exchange, as the Exchange’s exclusive order router. See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). NOS is utilized by the Exchange’s fully automated options trading system, PHLX XL<sup>®</sup>.

<sup>6</sup> The Options Clearing Corporation (“OCC”) assesses \$0.01 per contract side.

Today, a member organization qualifying for a Tier 2, 3 or 4 rebate in the Customer Rebate Program in Section B of the Pricing Schedule is entitled to receive a credit equal to the applicable Fixed Fee plus \$0.05 per contract, unless the away market transaction fee is \$0.00 or the away market pays a rebate, in which case the member organization is entitled to receive a credit equal to the applicable Fixed Fee. The Exchange proposes to amend the Routing Fees to state that a member organization that qualifies (1) for a Tier 2, 3, 4 *or* 5 rebate in the Customer Rebate Program in Section B of the Pricing Schedule; and (2) *routes away more than 5,000 Customer contracts per day in a given month to an away market* is entitled to receive a credit equal to the applicable Fixed Fee plus \$0.05 per contract, unless the away market transaction fee is \$0.00 or the away market pays a rebate, in which case the member organization is entitled to receive a credit equal to the applicable Fixed Fee.

The Exchange recently added a new tier to the Customer Rebate Program.<sup>7</sup> The Exchange desires to offer the credit to member organizations that qualify for a Tier 2, 3, 4 *or* 5 rebate in the Customer Rebate Program going forward. The Exchange added a second requirement which requires the member organization to route away more than 5,000 Customer contracts per day in a given month to receive the credit because the Exchange believes that the 5,000 threshold will reward member organizations that route a certain amount of Customer orders to the Exchange by providing them a credit in the event that those contracts are not executed at Phlx.<sup>8</sup> The 5,000 threshold represents what

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<sup>7</sup> See SR-Phlx-2013-130 (not yet published).

<sup>8</sup> Certain Customer contracts which are executed on Phlx are entitled to the Customer Rebate Program rebates in Section B of the Pricing Schedule. Customer rebates are paid on Customer Rebate Tiers in Section B of the Pricing Schedule according to categories



the Exchange believes is a reasonable amount of Customer contracts to warrant the receipt of the credit toward fees. As a result of this added criteria, some member organizations that are currently receiving a credit may no longer receive a credit if they do not route away more than 5,000 Customer contracts per day in a given month. These member organizations would continue to qualify for a Customer rebate if they transacted the requisite amount of Customer orders on the Exchange as specified in the Customer Rebate Program. The credit only applies to orders routed away from the Exchange and would now only be offered to member organizations that qualify for a Tier 2, 3, 4 or 5 rebate in the Customer Rebate Program and have more than 5,000 Customer contracts routed to an away market per day in a given month.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act<sup>10</sup> 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.

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(A or B). The Customer Rebate Tiers are calculated by totaling Customer volume in Multiply Listed Options (including SPY) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o) in a month.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4), (5).

The Exchange believes that the addition of the criteria that a member organization must route more than 5,000 Customer contracts per day in a given month to an away market, in addition to qualifying for Tiers 2, 3, 4 and now 5, is reasonable because the Exchange is intending to provide a credit to member organizations that qualify for a Customer rebate and route away a certain amount of volume. The addition of Tier 5 reflects a recent amendment to the Customer Rebate Program. Today, all member organizations that qualify for a Customer rebate tier which pays a rebate are eligible for the credit. The requirement that a member organization qualify for a Tier 2, 3, 4 or 5 Customer rebate should incentivize member organizations to continue to send Customer orders to Phlx by offering the credit in the event a certain amount of those orders are not filled on the Exchange and routed to an away market. By offering member organizations a credit toward the cost of routing to an away market with the additional volume requirements attached, the Exchange is seeking to encourage market participants to transact a greater number of Customer orders on Phlx which liquidity benefits all market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. In addition, the credit toward Customer Routing Fees is in addition to the Customer rebate received for the qualifying Customer Rebate Tier.

The Exchange is now adding a new criteria, that all member organizations that qualify for a Customer rebate tier which pays a rebate are eligible for a credit provided the member organization also routes away more than 5,000 Customer contracts per day in

a given month to an away market. The 5,000 Customer contracts represents a significant amount of volume to warrant a credit to reduce fees for member organizations that were unable to execute their Customer orders on the Exchange. It is important to note that when orders are routed to an away market they are routed based on price first.<sup>11</sup> Further, market participants may submit orders to the Exchange as ineligible for routing or “DNR” to avoid Routing Fees.<sup>12</sup> The Exchange believes it is reasonable to apply the credit only when a member organization has routed away a certain number of Customer orders, in this case 5,000 Customer orders per day, particularly since the member may chose not to have their orders routed. Despite the fact that the additional criteria may prevent some member organizations that receive the credit today from receiving it in the future, the Exchange believes that this added incentive is reasonable because it would impact those members that are routing away a certain amount of Customer orders and incurring higher Routing Fees. Member organizations will continue to direct their Customer orders to Phlx in order to obtain the applicable Customer rebate offered to qualifying orders through the Customer Rebate Program. Only in the instance that those

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<sup>11</sup> PHLX XL will route orders to away markets where the Exchange’s disseminated bid or offer is inferior to the national best bid (best offer) (“NBBO”) price. See Rule 1080(m). The PHLX XL II system will contemporaneously route an order marked as an Intermarket Sweep Order (“ISO”) to each away market disseminating prices better than the Exchange’s price, for the lesser of: (a) the disseminated size of such away markets, or (b) the order size and, if order size remains after such routing, trade at the Exchange’s disseminated bid or offer up to its disseminated size. If contracts still remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the PHLX XL II system will not route the order to the locking or crossing market center, with some exceptions noted in Rule 1080(m).

<sup>12</sup> See Rule 1066(h) (Certain Types of Orders Defined) and 1080(b)(i)(A) (PHLX XL and PHLX XL II).

orders are not filled, and the member organization has not indicated that the orders should be returned, will those orders be routed to an away market. At the time the order is entered, the member organization submitting the order does not know if the order will be filled on Phlx or routed away. The Exchange believes that it is reasonable to credit member organizations that qualify for a Tier 2, 3, 4 or 5 Customer rebate and that have more than 5,000 Customer contracts per day in a given month routed to an away market, because the credit will compensate those members for Routing Fees which are incurred when routing that quantity of Customer orders to an away market.

The Exchange believes that the addition of Tier 5 to the first qualifying criteria is equitable and not unfairly discriminatory because the Exchange intends to continue to offer the credit to member organizations that are sending a certain amount of Customer volume to the Exchange which qualifies for a Customer rebate. Any market participant that transacts Customer orders may qualify for a Customer rebate provided they transact a qualifying number of Customer contracts. Further, the Exchange believes that the addition of the second criteria that a member organization must route more than 5,000 Customer contracts per day in a given month to an away market is equitable and not unfairly discriminatory because the Exchange will apply the second criteria (more than 5,000 Customer contracts per day routed to an away market) to all market participants in a uniform manner.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Customer Rebate Program in Section B of the Pricing Schedule seeks to

encourage Customer order flow to be directed to the Exchange, which order flow benefits all market participants. All market participants are eligible to qualify for a Customer Rebate. Further, the Exchange will continue to offer the credit to all member organizations that qualify for certain Customer rebates (Tiers 2, 3, 4 or 5) and route away a certain amount of volume. The Exchange believes that offering member organizations that qualify for a Tier 2, 3, 4 or 5 Customer rebate, and that route more than 5,000 Customer contracts per day in a month to an away market, a credit does not impose an undue burden on competition, but rather promotes competition on the Exchange and encourages members to direct Customer orders to Phlx.

The Exchange does not believe that the added criteria that member organizations that route more than 5,000 Customer contracts to an away market receive the credit will impose a burden on competition because member organizations will continue to direct their Customer orders to Phlx in order to obtain the applicable Customer rebate offered to qualifying orders through the Customer Rebate Program. If those Customer orders are not filled and the member organization has not indicated that the orders should be returned, the Customer orders will be routed to an away market and may be applicable for the credit. The member organization that submits those Customer orders to the Exchange is unaware at that time the order is submitted if the order will be filled on Phlx or routed. For this reason, the Exchange does not believe that the added criteria will impose an undue burden on competition.

Market participants may submit orders to the Exchange as ineligible for routing or “DNR” to avoid Routing Fees.<sup>13</sup> It is important to note that when orders are routed to an

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<sup>13</sup> See note 12.

away market they are routed based on price first.<sup>14</sup> Today, other options exchanges also assess similar fees to recoup costs incurred when routing orders to away markets.<sup>15</sup>

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>16</sup> 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:

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<sup>14</sup> See note 11.

<sup>15</sup> See Chicago Board of Options Exchange, Incorporated's Fee Schedule. See NYSE Amex's Fee Schedule.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2013-125 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-2013-125. 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, 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-Phlx-2013-125 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.<sup>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).



**Exhibit 5**

*New text is underlined; deleted text is in brackets.*

**NASDAQ OMX PHLX LLC<sup>1</sup> PRICING SCHEDULE**

**ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ OMX PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. AS OF JANUARY 3, 2011, THE EXCHANGE WILL CALCULATE FEES ON A TRADE DATE BASIS.**

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<sup>1</sup>PHLX<sup>®</sup> is a registered trademark of The NASDAQ OMX Group, Inc.

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**V. Routing Fees**

**Non-Customer** • \$0.95 per contract to any options exchange.

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**Customer**

- Routing Fees to NOM: \$0.05 per contract fee ("Fixed Fee") in addition to the actual transaction fee assessed.
- Routing Fees to BX Options: \$0.00.
- Routing Fees to all other options exchanges: \$0.20 per contract fee ("Fixed Fee") in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee will be \$0.00.
- A member organization that: (1) qualifies[ying] for a Tier 2, 3, [or] 4 or 5 rebate in the Customer Rebate Program in Section B of the Pricing Schedule; and (2) routes away more than 5,000 Customer contracts per day in a given month to an away market is entitled to receive a credit equal to the applicable Fixed Fee plus \$0.05 per contract, unless the away market transaction fee is \$0.00 or the away market pays a rebate, in which case the member organization is entitled to receive a credit equal to the applicable Fixed Fee.

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