

Required fields are shown with yellow backgrounds and asterisks.

Filing 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"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires * <input type="text"/>			<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 Section 806(e)(1) <input checked="" type="checkbox"/> Section 806(e)(2) <input checked="" type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input checked="" type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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Description
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Relating to Routing Fees

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 action.

First Name * Angela Last Name * Dunn
 Title * Associate General Counsel
 E-mail * angela.dunn@nasdaqomx.com
 Telephone * (215) 496-5692 Fax

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.

(Title *)

Date 04/08/2013 Executive Vice President and General Counsel
 By Edward S. Knight

(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.

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”)¹ and Rule 19b-4 thereunder,² proposes to amend Section V of the Pricing Schedule entitled “Routing Fees.”

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on May 1, 2013.

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 10, 2012. 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.

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

The purpose of this filing is to amend Routing Fees in Section V of the Pricing Schedule in order to recoup costs that the Exchange incurs for routing and executing orders in equity options to various away markets.

Today, the Exchange assesses Non-Customers a flat rate of \$0.95 per contract on all Non-Customer orders routed to any away market and the Exchange assesses Customer orders a fixed fee plus the actual transaction fee dependent on the away market. Specifically, the Exchange assesses Customer orders routed to NASDAQ Options Market LLC (“NOM”) a fixed fee of \$0.05 per contract in addition to the actual transaction fee assessed by the away market. With respect to Customer orders that are routed to NASDAQ OMX BX, Inc. (“BX Options”), the Exchange does not assess a Routing Fee and does not pass rebates paid by the away market.³ The Exchange does not assess a Routing Fee when routing orders to BX Options because that exchange pays a rebate. Instead of netting the customer rebate paid by BX Options against the fixed fee,⁴ the Exchange simply does not assess a fee. The Exchange assesses Customer orders routed to all other away markets, except NOM and BX Options, a fixed fee of \$0.11 per contract in addition to the actual transaction fee assessed by the away market, unless the away market pays a rebate, then the Routing Fee is \$0.00.

³ BX Options pays a Customer Rebate to Remove Liquidity as follows: Customers are paid \$0.12 per contract in IWM, SPY and QQQ, \$0.32 per contract in All Other Penny Pilot Options and \$0.70 per contract in Non-Penny Pilot Options. See BX Options Rules at Chapter XV, Section 2(1).

⁴ BX Options does not assess a Customer a Fee to Remove Liquidity in any symbols today. See Chapter V, Section 2(1) of the BX Options Rules.

The fixed fees are based on costs that are incurred by the Exchange when routing to an away market in addition to the away market's transaction fee. For example, 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,⁵ to route orders in options listed and open for trading on the PHLX XL system to destination markets. Each time NOS routes to away markets NOS incurs a clearing-related cost⁶ 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 also incurs administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees ("ORFs") and technical costs associated with routing options. For Customer orders, the transaction fee assessed by the Exchange is based on the away market's actual transaction fee or rebate for a particular market participant at the time that the order was entered into the Exchange's trading system. This transaction fee is calculated on an order-by-order basis for Customer orders, since different away markets charge different amounts. In the event that there is no transaction fee or rebate assessed by the away market, the only fee assessed is the fixed Routing Fee.

The Exchange is proposing to amend the Routing Fees to all other options exchanges, except NOM and BX Options, to increase the fixed fee of \$0.11 to \$0.15 per

⁵ In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("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[®].

⁶ The Options Clearing Corporation ("OCC") assesses a clearing fee of \$0.01 per contract side. See Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR-OCC-2012-18).

contract.⁷ The Exchange currently does not recoup all of its costs to route to away markets other than NOM and BX Options. As mentioned herein, the Exchange incurs costs when routing to away markets including away market transaction fees, ORFs, clearing fees, Section 31 related fees, connectivity and membership fees. The Exchange is not recouping its costs currently with the \$0.11 per contract fixed fee and proposes to increase the fixed fee to \$0.15 per contract.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that amending the Customer Routing Fee to other away markets, other than NOM and BX Options, from a fixed fee of \$0.11 to \$0.15 per contract, in addition to the actual transaction fee, is reasonable because the proposed fixed fee for Customer orders is an approximation of the costs the Exchange will be charged for routing orders to away markets. For example, today, NYSE MKT LLC (“Amex”) does not assess a Customer transaction fee.¹⁰ Today, the Exchange would therefore assess a Customer order that was routed to Amex an \$0.11 per contract Routing Fee. The Exchange’s effective per contract expenses to route to Amex include the ORF,

⁷ The Exchange is not proposing to amend Non-Customer Routing Fees or Routing Fees for Customer orders routed to NOM or BX Options.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ See Amex’s Fee Schedule.

OCC clearing charges, Section 31 related fees, connectivity and membership fees are not covered by the \$0.11 per contract and are slightly higher than the \$0.15 per contract. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing optional routing services for Customer orders because it better approximates the costs incurred by the Exchange for routing such orders. While, each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets, including OCC clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options, the Exchange believes that the proposed Routing Fees will enable it to recover the costs it incurs to route Customer orders to away markets. Today, the Exchange is paying a higher average cost per contract than to route Customer orders to away markets, other than NOM and BX Options.

The Exchange believes that the proposed pricing for Customer Routing Fees to all other away markets, except NOM and BX Options, is equitable and not unfairly discriminatory because the Exchange would assess the same fixed fee when routing orders to an away market in addition to the away market transaction fee. The proposal would apply uniformly to all market participants when routing to an away market that pays a rebate. Market participants may submit orders to the Exchange as ineligible for

routing or “DNR” to avoid Routing Fees.¹¹ It is important to note that when orders are routed to an away market they are routed based on price first.¹²

Further, the Exchange believes that it is reasonable to continue to not assess a Customer Routing Fee when routing to all other options exchanges, except NOM and BX Options, if the away market pays a rebate. The Exchange will continue to assess a fixed fee, which fee is being increased with this proposal, plus the actual transaction charge assessed by the away market when routing to all other options exchanges, except NOM and BX Options, unless the away market pays a rebate. The Exchange would continue to not assess a Routing Fee if the away market pays a rebate because the Exchange believes it is reasonable to retain the rebate to offset the Routing Fee. The Exchange believes that market participants will have more certainty as to the Customer Routing Fee that will be assessed by the Exchange by simply not assessing a Routing Fee for Customer orders routed to away markets, other than NOM, that pay a rebate.¹³ The Exchange believes that

¹¹ See Rule 1066(h) (Certain Types of Orders Defined) and 1080(b)(i)(A) (PHLX XL and PHLX XL II).

¹² 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).

¹³ BX Options pays a Customer Rebate to Remove Liquidity as follows: Customers are paid \$0.12 per contract in IWM, SPY and QQQ, \$0.32 per contract in All Other Penny Pilot Options and \$0.70 per contract in Non-Penny Pilot Options. See BX Options Rules at Chapter XV, Section 2(1).

not assessing a fee for routing orders to BX Options, instead of netting the customer rebate paid by BX Options against the Fixed Fee¹⁴ is reasonable because although market participants routing orders to BX Options will not receive a credit, the Routing Fee is transparent. Market participants will not pay a Customer Routing Fee when routing orders to BX Options with this proposal instead of the \$0.05 per contract fee netted against the rebate, as is the case today. The Exchange believes that the proposed Customer Routing Fee to BX Options is equitable and not unfairly discriminatory because the proposal would apply uniformly to all market participants.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to assess Customer orders that are routed to NOM a fixed fee of \$0.05 per contract and orders that are routed to other away markets, other than NOM and BX Options, a fixed fee of \$0.15 per contract because the cost, in terms of actual cash outlays, to the Exchange to route to NOM (and BX Options)¹⁵ is lower. For example, costs related to routing to NOM are materially lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.¹⁶ NOS and the three NASDAQ OMX options markets have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for

¹⁴ BX Options does not assess a Customer a Fee to Remove Liquidity in any symbols today. See Chapter V, Section 2(1) of the BX Options Rules.

¹⁵ The Exchange does not assess the \$0.05 per contract Fixed Fee for routing orders to BX Options because that exchange pays Customer rebates, which the Exchange would retain to offset its cost.

¹⁶ See Chapter VI, Section 11 of the NASDAQ and BX Options Rules and Phlx Rule 1080(m)(iii)(A).

example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to NOM.

Finally, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess different fees for Customers orders as compared to non-Customer orders because the Exchange has traditionally assessed lower fees to Customers as compared to non-Customers. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.¹⁷

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 Exchange does not believe that the proposal creates intra-market competition because the Exchange is applying the same Routing Fees and credits to all market participants in the same manner dependent on the routing venue, with the exception of Customers. The Exchange will continue to assess separate Customer Routing Fees. Customers will continue to receive the lowest fees or no fees when routing orders, as is

¹⁷ BATS assesses lower customer routing fees as compared to non-customer routing fees per the away market. For example BATS assesses ISE customer routing fees of \$0.30 per contract and an ISE non-customer routing fee of \$0.57 per contract. See BATS BZX Exchange Fee Schedule.

the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.¹⁸

The Exchange's proposal would allow the Exchange to continue to recoup its costs when routing orders to away markets when such orders are designated as available for routing by the market participant. The Exchange continues to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to NOM and is providing those savings to all market participants. Members and member organizations may choose to mark the order as ineligible for routing to avoid incurring these fees.¹⁹ Today, other options exchanges also assess fixed routing fees to recoup costs incurred by the Exchange to route orders to away markets.²⁰

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those members organizations that opt to direct orders to the Exchange rather than competing venues.

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

¹⁸ Id.

¹⁹ See supra note 11.

²⁰ See CBOE's Fees Schedule and ISE's Fee Schedule.

No written comments were either solicited or 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,²¹ 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

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

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.

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2013-38)

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

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 April 8, 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 changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on May 1, 2013.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The purpose of this filing is to amend Routing Fees in Section V of the Pricing Schedule in order to recoup costs that the Exchange incurs for routing and executing orders in equity options to various away markets.

Today, the Exchange assesses Non-Customers a flat rate of \$0.95 per contract on all Non-Customer orders routed to any away market and the Exchange assesses Customer orders a fixed fee plus the actual transaction fee dependent on the away market. Specifically, the Exchange assesses Customer orders routed to NASDAQ Options Market LLC (“NOM”) a fixed fee of \$0.05 per contract in addition to the actual transaction fee assessed by the away market. With respect to Customer orders that are routed to NASDAQ OMX BX, Inc. (“BX Options”), the Exchange does not assess a Routing Fee and does not pass rebates paid by the away market.³ The Exchange does not assess a Routing Fee when routing orders to BX Options because that exchange pays a rebate.

³ BX Options pays a Customer Rebate to Remove Liquidity as follows: Customers are paid \$0.12 per contract in IWM, SPY and QQQ, \$0.32 per contract in All Other Penny Pilot Options and \$0.70 per contract in Non-Penny Pilot Options. See BX Options Rules at Chapter XV, Section 2(1).

Instead of netting the customer rebate paid by BX Options against the fixed fee,⁴ the Exchange simply does not assess a fee. The Exchange assesses Customer orders routed to all other away markets, except NOM and BX Options, a fixed fee of \$0.11 per contract in addition to the actual transaction fee assessed by the away market, unless the away market pays a rebate, then the Routing Fee is \$0.00.

The fixed fees are based on costs that are incurred by the Exchange when routing to an away market in addition to the away market's transaction fee. For example, 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,⁵ to route orders in options listed and open for trading on the PHLX XL system to destination markets. Each time NOS routes to away markets NOS incurs a clearing-related cost⁶ 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 also incurs administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees ("ORFs") and technical costs associated with routing options. For Customer orders, the transaction fee assessed by the Exchange is based on the away market's actual transaction fee or rebate for a particular market participant at the time that

⁴ BX Options does not assess a Customer a Fee to Remove Liquidity in any symbols today. See Chapter V, Section 2(1) of the BX Options Rules.

⁵ In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("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[®].

⁶ The Options Clearing Corporation ("OCC") assesses a clearing fee of \$0.01 per contract side. See Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR-OCC-2012-18).

the order was entered into the Exchange's trading system. This transaction fee is calculated on an order-by-order basis for Customer orders, since different away markets charge different amounts. In the event that there is no transaction fee or rebate assessed by the away market, the only fee assessed is the fixed Routing Fee.

The Exchange is proposing to amend the Routing Fees to all other options exchanges, except NOM and BX Options, to increase the fixed fee of \$0.11 to \$0.15 per contract.⁷ The Exchange currently does not recoup all of its costs to route to away markets other than NOM and BX Options. As mentioned herein, the Exchange incurs costs when routing to away markets including away market transaction fees, ORFs, clearing fees, Section 31 related fees, connectivity and membership fees. The Exchange is not recouping its costs currently with the \$0.11 per contract fixed fee and proposes to increase the fixed fee to \$0.15 per contract.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that amending the Customer Routing Fee to other away markets, other than NOM and BX Options, from a fixed fee of \$0.11 to \$0.15 per contract, in addition to the actual transaction fee, is reasonable because the proposed

⁷ The Exchange is not proposing to amend Non-Customer Routing Fees or Routing Fees for Customer orders routed to NOM or BX Options.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

fixed fee for Customer orders is an approximation of the costs the Exchange will be charged for routing orders to away markets. For example, today, NYSE MKT LLC (“Amex”) does not assess a Customer transaction fee.¹⁰ Today, the Exchange would therefore assess a Customer order that was routed to Amex an \$0.11 per contract Routing Fee. The Exchange’s effective per contract expenses to route to Amex include the ORF, OCC clearing charges, Section 31 related fees, connectivity and membership fees are not covered by the \$0.11 per contract and are slightly higher than the \$0.15 per contract. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing optional routing services for Customer orders because it better approximates the costs incurred by the Exchange for routing such orders. While, each destination market’s transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets, including OCC clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options, the Exchange believes that the proposed Routing Fees will enable it to recover the costs it incurs to route Customer orders to away markets. Today, the Exchange is paying a higher average cost per contract than to route Customer orders to away markets, other than NOM and BX Options.

The Exchange believes that the proposed pricing for Customer Routing Fees to all other away markets, except NOM and BX Options, is equitable and not unfairly discriminatory because the Exchange would assess the same fixed fee when routing orders to an away market in addition to the away market transaction fee. The proposal

¹⁰ See Amex’s Fee Schedule.

would apply uniformly to all market participants when routing to an away market that pays a rebate. Market participants may submit orders to the Exchange as ineligible for routing or “DNR” to avoid Routing Fees.¹¹ It is important to note that when orders are routed to an away market they are routed based on price first.¹²

Further, the Exchange believes that it is reasonable to continue to not assess a Customer Routing Fee when routing to all other options exchanges, except NOM and BX Options, if the away market pays a rebate. The Exchange will continue to assess a fixed fee, which fee is being increased with this proposal, plus the actual transaction charge assessed by the away market when routing to all other options exchanges, except NOM and BX Options, unless the away market pays a rebate. The Exchange would continue to not assess a Routing Fee if the away market pays a rebate because the Exchange believes it is reasonable to retain the rebate to offset the Routing Fee. The Exchange believes that market participants will have more certainty as to the Customer Routing Fee that will be assessed by the Exchange by simply not assessing a Routing Fee for Customer orders

¹¹ See Rule 1066(h) (Certain Types of Orders Defined) and 1080(b)(i)(A) (PHLX XL and PHLX XL II).

¹² 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).

routed to away markets, other than NOM, that pay a rebate.¹³ The Exchange believes that not assessing a fee for routing orders to BX Options, instead of netting the customer rebate paid by BX Options against the Fixed Fee¹⁴ is reasonable because although market participants routing orders to BX Options will not receive a credit, the Routing Fee is transparent. Market participants will not pay a Customer Routing Fee when routing orders to BX Options with this proposal instead of the \$0.05 per contract fee netted against the rebate, as is the case today. The Exchange believes that the proposed Customer Routing Fee to BX Options is equitable and not unfairly discriminatory because the proposal would apply uniformly to all market participants.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to assess Customer orders that are routed to NOM a fixed fee of \$0.05 per contract and orders that are routed to other away markets, other than NOM and BX Options, a fixed fee of \$0.15 per contract because the cost, in terms of actual cash outlays, to the Exchange to route to NOM (and BX Options)¹⁵ is lower. For example, costs related to routing to NOM are materially lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.¹⁶ NOS and the

¹³ BX Options pays a Customer Rebate to Remove Liquidity as follows: Customers are paid \$0.12 per contract in IWM, SPY and QQQ, \$0.32 per contract in All Other Penny Pilot Options and \$0.70 per contract in Non-Penny Pilot Options. See BX Options Rules at Chapter XV, Section 2(1).

¹⁴ BX Options does not assess a Customer a Fee to Remove Liquidity in any symbols today. See Chapter V, Section 2(1) of the BX Options Rules.

¹⁵ The Exchange does not assess the \$0.05 per contract Fixed Fee for routing orders to BX Options because that exchange pays Customer rebates, which the Exchange would retain to offset its cost.

¹⁶ See Chapter VI, Section 11 of the NASDAQ and BX Options Rules and Phlx Rule 1080(m)(iii)(A).

three NASDAQ OMX options markets have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to NOM.

Finally, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess different fees for Customers orders as compared to non-Customer orders because the Exchange has traditionally assessed lower fees to Customers as compared to non-Customers. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.¹⁷

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 Exchange does not believe that the proposal creates intra-market competition because the Exchange is applying the same Routing Fees and credits to all market

¹⁷ BATS assesses lower customer routing fees as compared to non-customer routing fees per the away market. For example BATS assesses ISE customer routing fees of \$0.30 per contract and an ISE non-customer routing fee of \$0.57 per contract. See BATS BZX Exchange Fee Schedule.

participants in the same manner dependent on the routing venue, with the exception of Customers. The Exchange will continue to assess separate Customer Routing Fees. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.¹⁸

The Exchange's proposal would allow the Exchange to continue to recoup its costs when routing orders to away markets when such orders are designated as available for routing by the market participant. The Exchange continues to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to NOM and is providing those savings to all market participants. Members and member organizations may choose to mark the order as ineligible for routing to avoid incurring these fees.¹⁹ Today, other options exchanges also assess fixed routing fees to recoup costs incurred by the Exchange to route orders to away markets.²⁰

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably

¹⁸ Id.

¹⁹ See supra note 11.

²⁰ See CBOE's Fees Schedule and ISE's Fee Schedule.

allocated to those members organizations that opt to direct orders to the Exchange rather than competing venues.

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.²¹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2013-38 on the subject line.

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2013-38. 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-2013-38 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.²²

Kevin M. O'Neill
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

NASDAQ OMX PHLX LLC¹ PRICING SCHEDULE

* * * * *

V. Routing Fees

Non-Customer	<ul style="list-style-type: none"> • \$0.95 per contract to any options exchange.
Customer	<ul style="list-style-type: none"> • 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.<u>[11]15</u> 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 qualifying for a Tier 2, 3 or 4 rebate in the Customer Rebate Program in Section A 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.

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