

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	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) <input type="checkbox"/>	Section 3C(b)(2) <input type="checkbox"/>
Section 806(e)(2) <input type="checkbox"/>	

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

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Waiver of the Application and Initiation Fees for Certain Members

**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 04/24/2013

By Edward S. Knight

Executive Vice President and General Counsel

Edward S Knight,

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 \***

Add Remove View

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 \***

Add Remove View

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**

Add Remove View

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**

Add Remove View

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**

Add Remove View

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**

Add Remove View

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

**Exhibit 5 - Proposed Rule Text**

Add Remove View

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

**Partial Amendment**

Add Remove View

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

1. Text of 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 the Exchange’s Pricing Schedule to waive the Application and Initiation Fees, for a defined period of time, in order that certain market making firms may comply with new requirements imposed by the Exchange at no additional cost.

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

---

<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 Exchange recently amended various Exchange Rules to establish that member organizations may qualify to be Remote Streaming Quote Traders<sup>3</sup> with as many as three affiliated RSQTs.<sup>4</sup> RSQTs are, along with Specialists,<sup>5</sup> one of several types of Registered Option Traders ("ROTs")<sup>6</sup> on the Exchange. SR-Phlx-2013-03 amended Rules 507 and 1014 to define a Remote Streaming Quote Trader Organization or ("RSQTO") and a Remote Market Maker Organizations ("RMOs").<sup>7</sup> In addition RSQTs

---

<sup>3</sup> A Remote Streaming Quote Trader ("RSQT") is defined in Exchange Rule 1014(b)(ii)(B) as an Registered Options Trader that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

<sup>4</sup> See Securities Exchange Act Release No. 68689 (January 18, 2013), 78 FR 5518 (January 25, 2013) (SR-Phlx-2013-03) (a rule change which amended Phlx Rules 507 and 1014 to enable RSQT Organizations to affiliate with up to three RSQTS).

<sup>5</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>6</sup> A ROT includes a Streaming Quote Trader ("SQT"), a RSQT and a Non-SQT, which by definition is neither a SQT nor a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii). Rule 1014 states that, in addition to other requirements, on a daily basis RSQTs and other SQTs are responsible to quote two-sided markets in not less than a specified percentage of options assigned by the Exchange at the request of such traders, unless specifically exempted from such quoting (market-making) responsibility.

<sup>7</sup> See Exchange Rule 507(a) and 1014(b)(ii)(B). See Securities Exchange Act Release No. 68689 (January 18, 2013), 78 FR 5518 (January 25, 2013) (SR-Phlx-2013-03). This filing became effective on April 19, 2013.

may also be referred to as Remote Market Markers (“RMMs”).<sup>8</sup> Amended Rule 507(a) provides that “[a]s many as three RSQTOs at any time may be identified by and affiliated with an RSQTO. Each of the affiliated RSQTOs must be qualified as an ROT and must be in good standing.”<sup>9</sup> Further, the rule change requires that “[u]pon approval of the proposal...each member organization operating as an RSQTO pursuant this rule will: (a) be deemed an RSQTO, and b) within 21 days notify the Exchange of no more than three RSQTOs affiliated with the RSQTO (the “Conversion Period”).”<sup>10</sup>

Phlx member organizations are required to have one associated person designated as their qualifying permit holder in order for the firm to be eligible for membership.<sup>11</sup> Further, “[a]ny Series A-1 permit holder who is associated with a duly qualified and registered member organization (unless such holder's permit has been terminated or the rights and privileges thereof have been suspended or restricted) shall, subject to the By-Laws (including, without limitation, Section 6-1 thereof) and these Rules, be...(ii) required to designate a single existing or applying member organization as such permit holder's “primarily affiliated” member organization for the purpose of exercising

---

<sup>8</sup> See Rule 507(a).

<sup>9</sup> Id.

<sup>10</sup> See Rule 507(a). See also Options Trader Alert (“OTA”) #2013-21 dated April 22, 2013 which provided additional notice to RSQTOs of their obligation to notify the Exchange of affiliated RMMs during the Conversion Period.

<sup>11</sup> See Exchange Rule 908 entitled “Rights and Privileges of A-1 Permits.” Specifically, “[a] Series A-1 permit shall only be issued to an individual who is a natural person of at least twenty-one (21) years of age. A Series A-1 permit shall only be issued to a corporation who meets the eligibility and application requirements set forth in the By-Laws and Rules, including, without limitation, Rule 972, and no individual shall hold more than a single Series A-1 permit. Series A-1 permits issued in accordance with this Rule 908 shall be in such limited or unlimited number and may be issued from time to time by the Exchange, in each case as determined by the Board of Directors in its sole discretion.” See Rule 908(b).

(through such member organization's designated Member Organization Representative) such permit holder's right to vote, as set forth in Article II of the By-Laws, provided that, if such holder designates any applying member organization, such holder will then also qualify such applying member organization for the purposes of Rule 921(a); and (iii) required to maintain a primary affiliation, as described in the foregoing clause (ii), with an eligible member organization at all times that such holder holds a permit.

In light of SR-Phlx-2013-03, the Exchange now requires that each RSQTO have a minimum of one affiliated RMM (an RSQT) to qualify the RSQTO. The RSQTO may have up to a maximum of three affiliated RMMS under the amended rules. The Exchange anticipates that during the Conversion Period certain RSQTOs will need to transfer their existing permit to an RMM, by filing an Individual Member Application with the Exchange for the RMM pursuant to Rule 900.2, in order to comply with the new requirements. Today, all new member applicants are assessed an Application Fee of \$350.00 and an Initiation Fee of \$1,500. Under the current Pricing Schedule, an RMM would be assessed these fees as a new Phlx member.

The Exchange desires to assist RSQTOs in complying with the requirements of Rule 507(a) during the Conversion Period without incurring additional costs. The Exchange, therefore, proposes to waive both the Application and Initiation Fees for **existing** RSQTOs desiring to file an application to transfer their existing permits to a new RMM during the Conversion Period. The Exchange will only waive the Application and Initiation Fees for RSQTOs to qualify up to one RMM, provided the existing qualifier is not an RMM today. If an RSQTO desires to qualify up to the maximum number of three RMMs, only the first application involving the transfer of the existing permit to a new

RMM will receive the waiver of the Application and Initiation Fees, the other two RMMs would be assessed the Application and Initiation Fees. In addition, new RSQTOs would be assessed the Application and Initiation Fees, the waiver would only apply to existing RSQTOs.

The waiver period will be from April 24, 2013 to May 13, 2013.<sup>12</sup> The Exchange is proposing to add rule text to the Pricing Schedule to note the waiver period.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposal is reasonable because the Exchange is seeking to lower costs for RSQTOs that are impacted by the recent amendment to Rules 507 and 1014. The Exchange does not desire to increase costs for RSQTOs attempting to comply with the new requirements of Rule 507(a) during the Conversion Period. The Exchange also believes that the proposal is equitable and not unfairly discriminatory because the Exchange is uniformly applying the waiver to all RSQTOs impacted by the proposal who are current members of the Exchange. All other market participants would not be affected by the rule change as it applies specifically to remote market makers.

---

<sup>12</sup> Pursuant to SR-Phlx-2013-03, the Conversion Period starts at the later of the approval of SR-Phlx-2013-03, which was on April 19, 2013, or the issuance of an OTA by the Exchange, which was on April 22, 2013, and ends 21 days later.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

Further, new RSQTOs to the Exchange should pay Application and Initiation Fees similar to current RSQTOs that incurred those fees at the time of application.

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 is waiving the fees associated with complying with Rule 507(a) during the Conversion Period for RSQTOs that would be impacted and incur fees not borne by other Exchange members. The Exchange does not believe that the waiver creates an undue burden on competition, rather the waiver attempts to equalize the treatment of its members in not imposing higher costs on market making firms.

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 are influenced by robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members 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

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,<sup>15</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

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.

---

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

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2013-43)

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Waive the Application and Initiation Fees in Certain Circumstances

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 April 24, 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 the Exchange’s Pricing Schedule to waive the Application and Initiation Fees, for a defined period of time, in order that certain market making firms may comply with new requirements imposed by the Exchange at no additional cost.

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.

---

<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 Exchange recently amended various Exchange Rules to establish that member organizations may qualify to be Remote Streaming Quote Traders<sup>3</sup> with as many as three affiliated RSQTs.<sup>4</sup> RSQTs are, along with Specialists,<sup>5</sup> one of several types of Registered Option Traders (“ROTs”)<sup>6</sup> on the Exchange. SR-Phlx-2013-03 amended

---

<sup>3</sup> A Remote Streaming Quote Trader (“RSQT”) is defined in Exchange Rule 1014(b)(ii)(B) as an Registered Options Trader that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

<sup>4</sup> See Securities Exchange Act Release No. 68689 (January 18, 2013), 78 FR 5518 (January 25, 2013) (SR-Phlx-2013-03) (a rule change which amended Phlx Rules 507 and 1014 to enable RSQT Organizations to affiliate with up to three RSQTS).

<sup>5</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>6</sup> A ROT includes a Streaming Quote Trader (“SQT”), a RSQT and a Non-SQT, which by definition is neither a SQT nor a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii). Rule 1014 states that, in addition to other requirements, on a daily basis RSQTs and other SQTs are responsible to quote two-sided markets in not less

Rules 507 and 1014 to define a Remote Streaming Quote Trader Organization or (“RSQTO”) and a Remote Market Maker Organizations (“RMOs”).<sup>7</sup> In addition RSQTOs may also be referred to as Remote Market Markers (“RMMs”).<sup>8</sup> Amended Rule 507(a) provides that “...[a]s many as three RSQTOs at any time may be identified by and affiliated with an RSQTO. Each of the affiliated RSQTOs must be qualified as an ROT and must be in good standing.”<sup>9</sup> Further, the rule change requires that “[u]pon approval of the proposal...each member organization operating as an RSQTO pursuant this rule will: (a) be deemed an RSQTO, and b) within 21 days notify the Exchange of no more than three RSQTOs affiliated with the RSQTO (the “Conversion Period”).”<sup>10</sup>

Phlx member organizations are required to have one associated person designated as their qualifying permit holder in order for the firm to be eligible for membership.<sup>11</sup>

---

than a specified percentage of options assigned by the Exchange at the request of such traders, unless specifically exempted from such quoting (market-making) responsibility.

<sup>7</sup> See Exchange Rule 507(a) and 1014(b)(ii)(B). See Securities Exchange Act Release No. 68689 (January 18, 2013), 78 FR 5518 (January 25, 2013) (SR-Phlx-2013-03). This filing became effective on April 19, 2013.

<sup>8</sup> See Rule 507(a).

<sup>9</sup> Id.

<sup>10</sup> See Rule 507(a). See also Options Trader Alert (“OTA”) #2013-21 dated April 22, 2013 which provided additional notice to RSQTOs of their obligation to notify the Exchange of affiliated RMMs during the Conversion Period.

<sup>11</sup> See Exchange Rule 908 entitled “Rights and Privileges of A-1 Permits.” Specifically, “[a] Series A-1 permit shall only be issued to an individual who is a natural person of at least twenty-one (21) years of age. A Series A-1 permit shall only be issued to a corporation who meets the eligibility and application requirements set forth in the By-Laws and Rules, including, without limitation, Rule 972, and no individual shall hold more than a single Series A-1 permit. Series A-1 permits issued in accordance with this Rule 908 shall be in such limited or unlimited number and may be issued from time to time by the Exchange, in each case as determined by the Board of Directors in its sole discretion.” See Rule 908(b).

Further, “[a]ny Series A-1 permit holder who is associated with a duly qualified and registered member organization (unless such holder's permit has been terminated or the rights and privileges thereof have been suspended or restricted) shall, subject to the By-Laws (including, without limitation, Section 6-1 thereof) and these Rules, be:...(ii) required to designate a single existing or applying member organization as such permit holder's “primarily affiliated” member organization for the purpose of exercising (through such member organization's designated Member Organization Representative) such permit holder's right to vote, as set forth in Article II of the By-Laws, provided that, if such holder designates any applying member organization, such holder will then also qualify such applying member organization for the purposes of Rule 921(a); and (iii) required to maintain a primary affiliation, as described in the foregoing clause (ii), with an eligible member organization at all times that such holder holds a permit.

In light of SR-Phlx-2013-03, the Exchange now requires that each RSQTO have a minimum of one affiliated RMM (an RSQT) to qualify the RSQTO. The RSQTO may have up to a maximum of three affiliated RMMS under the amended rules. The Exchange anticipates that during the Conversion Period certain RSQTOs will need to transfer their existing permit to an RMM, by filing an Individual Member Application with the Exchange for the RMM pursuant to Rule 900.2, in order to comply with the new requirements. Today, all new member applicants are assessed an Application Fee of \$350.00 and an Initiation Fee of \$1,500. Under the current Pricing Schedule, an RMM would be assessed these fees as a new Phlx member.

The Exchange desires to assist RSQTOs in complying with the requirements of Rule 507(a) during the Conversion Period without incurring additional costs. The

Exchange, therefore, proposes to waive both the Application and Initiation Fees for **existing** RSQTOs desiring to file an application to transfer their existing permits to a new RMM during the Conversion Period. The Exchange will only waive the Application and Initiation Fees for RSQTOs to qualify up to one RMM, provided the existing qualifier is not an RMM today. If an RSQTO desires to qualify up to the maximum number of three RMMs, only the first application involving the transfer of the existing permit to a new RMM will receive the waiver of the Application and Initiation Fees, the other two RMMs would be assessed the Application and Initiation Fees. In addition, new RSQTOs would be assessed the Application and Initiation Fees, the waiver would only apply to existing RSQTOs.

The waiver period will be from April 24, 2013 to May 13, 2013.<sup>12</sup> The Exchange is proposing to add rule text to the Pricing Schedule to note the waiver period.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposal is reasonable because the Exchange is seeking to lower costs for RSQTOs that are impacted by the recent amendment to Rules

---

<sup>12</sup> Pursuant to SR-Phlx-2013-03, the Conversion Period starts at the later of the approval of SR-Phlx-2013-03, which was on April 19, 2013, or the issuance of an OTA by the Exchange, which was on April 22, 2013, and ends 21 days later.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

507 and 1014. The Exchange does not desire to increase costs for RSQTOs attempting to comply with the new requirements of Rule 507(a) during the Conversion Period. The Exchange also believes that the proposal is equitable and not unfairly discriminatory because the Exchange is uniformly applying the waiver to all RSQTOs impacted by the proposal who are current members of the Exchange. All other market participants would not be affected by the rule change as it applies specifically to remote market makers. Further, new RSQTOs to the Exchange should pay Application and Initiation Fees similar to current RSQTOs that incurred those fees at the time of application.

**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 is waiving the fees associated with complying with Rule 507(a) during the Conversion Period for RSQTOs that would be impacted and incur fees not borne by other Exchange members. The Exchange does not believe that the waiver creates an undue burden on competition, rather the waiver attempts to equalize the treatment of its members in not imposing higher costs on market making firms.

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 are influenced by robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members 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.<sup>15</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:

- 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-2013-43 on the subject line.

Paper comments:

---

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

- 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-2013-43. 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-2013-43 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>16</sup>

Kevin M. O'Neill  
Deputy Secretary

---

<sup>16</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**

\* \* \* \* \*

**VI. MEMBERSHIP FEES****A. Permit and Registration Fees**

Permit Fees for Phlx Members (per month)<sup>14, 15</sup>

Transacting business on Phlx	\$2,100 <sup>16</sup>
Not transacting business on Phlx	\$7,500 <sup>17</sup>

<sup>16</sup>A member or member organization will pay an additional permit fee for each sponsored options participant.

<sup>17</sup>A member or member organization will be assessed a \$7,500 monthly fee if that member is (i) not a PSX Only Participant; or (ii) not engaged in an options business at Phlx in a particular month.

<sup>15</sup>A member or member organization will be assessed the \$2,100 monthly Permit Fee if that member or member organization: (1) transacts its option orders in its assigned Phlx house account in a particular month; or (2) is a clearing member of The Options Clearing Corporation or a Floor Broker; or (3) for those member organizations which are under Common Ownership, transacts at least one options trade in a Phlx house account that is assigned to one of the member organizations under Common Ownership.

---

Application Fee<sup>14, 18, #</sup>

<sup>18</sup>An applicant will be assessed the Application Fee each time an applicant applies for membership, notwithstanding the fact that the applicant may have been a former permit holder. \$350

---

Application Fee for Lapsed Applications<sup>14</sup> \$350

---

Transfer of Affiliation Fee<sup>19</sup> \$350

<sup>19</sup>The Exchange will not assess the Initiation Fee on a permit holder who applies to transfer affiliation from one member organization to another member organization if the permit holder continuously held his or her permit without any lapse in membership.

Account Fee <sup>14</sup>	\$50.00 monthly
Initiation Fee <sup>14, #</sup>	\$1,500
Inactive Nominee Fee	\$600 for 6 months <sup>20, 21</sup>

<sup>20</sup>The member organization will be assessed \$100 per month for the applicable six month period unless the member organization provides proper notice of its intent to terminate an inactive nominee prior to the first day of the next billing month.

<sup>21</sup>An inactive nominee's status expires after six months unless it has been reaffirmed in writing by the member organization or is sooner terminated. A member organization will be assessed the Inactive Nominee Fee every time the status is reaffirmed. An inactive nominee is also assessed Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in their inactive nominee status. However, an inactive nominee would not be assessed Application and Initiation Fees if such inactive nominee applied for membership without any lapse in that individual's association with a particular member organization. An Inactive Nominee is also assessed the Trading Floor Personnel Registration Fee.

<sup>14</sup> *Applicants that apply for membership solely to participate in the NASDAQ OMX PSX equities market are not assessed a Permit Fee, Application Fee, Initiation Fee, or Account Fee. Should such approved member or member organization subsequently elect to engage in business on Phlx XL II, the Exchange's options platform, the monthly Permit Fee, Initiation Fee and Account Fee will apply. For purposes of assessing the Permit Fee, an existing member or member organization that does not conduct an options business on Phlx XL II, but only conducts business on NASDAQ OMX PSX under an MPID registered to that member or member organization will not be assessed a Permit Fee.*

# The Exchange will waive the Application and Initiation Fees from April 24, 2013 to May 13, 2013 ("Conversion Period") for current RSQTOs desiring to file an application to transfer existing permits to an RMM during the Conversion Period. The Exchange will only waive the Application and Initiation Fees for RSQTOs when transferring existing permits to an RMM, provided the current qualifier is not an RMM today.

- **Permit Fees:** The Exchange has established the date of notification of termination of a permit as the date that permit fee billing will cease. Additionally, a permit holder will be billed only one monthly permit fee if the holder transfers from one member organization to another previously unrelated member organization as a result of a merger, partial sale or other business combination during a monthly permit fee period in order to avoid double billing in the month the merger or business combination occurred.

- The Initiation Fee is imposed on a new member upon the issuance of a permit, notwithstanding the fact that the new member may have been a former permit holder.

**Clerk Fee**

\$100 per month

- This Clerk Fee is imposed on any registered on-floor person employed by or associated with a member or member organization pursuant to Rule 1090, including Inactive Nominees pursuant to Rule 925. This fee is not imposed on permit holders.

\* \* \* \* \*