

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

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

Relating to Qualified Contingent Cross Orders

**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 05/01/2013      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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to amend fees and rebates applicable to Qualified Contingent Cross (“QCC”) orders.

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 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.

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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 fees and rebates applicable to both electronic QCC Orders (“eQCC”) <sup>3</sup> and Floor QCC Orders <sup>4</sup> (collectively “QCC Orders”). The Exchange believes that the proposed amendments to its pricing for QCC Orders will enable the Exchange to attract additional QCC Orders by increasing the amount of rebates paid for certain increased thresholds and eliminating service fees on QCC Orders.

Today, the Exchange pays rebates on QCC Orders based on the following five tier rebate schedule:

<b>Threshold</b>	<b>Rebate per Contract</b>
0 to 199,999 contracts in a month	\$0.00
200,000 to 499,999 contracts in a month	\$0.01
500,000 to 699,999 contracts in a month	\$0.05

<sup>3</sup> A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. See Rule 1080(o). See also Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx-2011-47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (“QCTs”) that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

<sup>4</sup> A Floor QCC Order must: (i) be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the National Best Bid and Offer (“NBBO”); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. See Rule 1064(e). See also Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-Phlx-2011-56).

700,000 to 999,999 contracts in a month	\$0.07
Over 1,000,000 contracts in a month	\$0.11

Today, the Exchange pays a rebate on all qualifying executed QCC Orders, as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e), except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend,<sup>5</sup> merger,<sup>6</sup> short stock interest<sup>7</sup> or reversal or conversion strategy<sup>8</sup> execution. Today, the maximum rebate the Exchange will pay in a given month for QCC Orders is \$275,000. Today, QCC Transaction Fees for a Specialist,<sup>9</sup> Market Maker,<sup>10</sup> Professional,<sup>11</sup> Firm<sup>12</sup> and Broker-Dealer<sup>13</sup> are \$0.20 per contract.

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<sup>5</sup> A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. See Section II of the Pricing Schedule.

<sup>6</sup> A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. See Section II of the Pricing Schedule.

<sup>7</sup> A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. See Section II of the Pricing Schedule.

<sup>8</sup> Reversal and conversion strategies are types of transactions that employ calls and puts of the same strike price and the underlying stock. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration. See Section II of the Pricing Schedule.

<sup>9</sup> A “Specialist” is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>10</sup> A “Market Maker” includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (see Rule 1014(b)(ii)(A)) and Remote

The Exchange will continue to pay rebates on QCC Orders for all qualifying executed QCC Orders, as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e), except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend, merger, short stock interest or reversal or conversion strategy executions.

The Exchange proposes to amend the QCC Rebate Schedule by increasing the Tier 1 threshold of 0 to 199,999 to 0 to 299,999. The Exchange will continue to not pay a rebate for a QCC Order for Tier 1. The Exchange proposes to amend the Tier 2 threshold from 200,000 to 499,999 to 300,000 to 499,999 and also increase the Tier 2 rebate from \$0.01 to \$0.07 per contract. The Exchange proposes to amend the Tier 3 threshold of 500,000 to 699,999 by increasing the Tier 3 rebate from \$0.05 to \$0.08 per contract. The Exchange proposes to amend Tier 4, which has a threshold of 700,000 to 999,999, by increasing the current rebate from \$0.07 to \$0.09 per contract. The Exchange does not propose to amend the Tier 5 threshold of over 1,000,000 contracts in a month or rebate of \$0.11 per contract.

Additionally, the Exchange proposes to amend the maximum QCC Rebate that the Exchange pays in a given month. Today, the maximum QCC Rebate that the

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Streaming Quote Traders (see Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

<sup>11</sup> The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

<sup>12</sup> The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

<sup>13</sup> The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

Exchange pays in a given month is \$275,000. The Exchange proposes to increase the maximum QCC Rebate to \$375,000.

As mentioned herein, QCC Transaction Fees for a Specialist, Market Maker, Professional, Firm and Broker-Dealer are \$0.20 per contract. The Exchange does not propose to amend this fee.

The Exchange proposes to eliminate certain Service Fees associated with QCC Orders. Today, for QCC Orders as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), a Service Fee of \$0.07 per side is assessed to a Specialist or Market Maker that has reached the Monthly Market Maker Cap.<sup>14</sup> The \$0.07 Service Fee applies to every contract side of a QCC Order and Floor QCC Order after a Specialist or Market Maker has reached the Monthly Market Maker Cap, except for reversal and conversion strategies executed via QCC. The Service Fee is not assessed to a Specialist or Market Maker that does not reach the Monthly Market Maker Cap in a particular calendar month. The Exchange proposes to eliminate the Service Fee of \$0.07 per side.

Further, today for QCC Orders as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), a Service Fee of \$0.01 per side applies once a Firm has reached the Monthly Firm Fee Cap,<sup>15</sup> except for reversal and conversion strategies

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<sup>14</sup> Specialists and Market Makers are subject to a “Monthly Market Maker Cap” of \$550,000 for: (i) electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest and reversal and conversion strategy executions (as defined in this Section II) are excluded from the Monthly Market Maker Cap.

<sup>15</sup> Firms are subject to a maximum fee of \$75,000 (“Monthly Firm Fee Cap”). Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above,

executed via QCC. This \$0.01 Service Fee applies to every contract side of a QCC Order and Floor QCC Order after a Firm has reached the Monthly Firm Fee Cap. The Service Fee is not assessed to a Firm that does not reach the Monthly Firm Fee Cap in a particular calendar month. The Exchange proposes to eliminate the Service Fee of \$0.01 per side. Once a Specialist or Market Maker reaches the Monthly Market Maker Cap or a Firm reaches the Monthly Firm Fee Cap in a given month those market participants would not be assessed transaction fees, including the \$0.20 per contract QCC Transaction Fee.

The Exchange proposes to insert tier numbers into the QCC Rebate Schedule for ease of reference to identify each rebate tier.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>16</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>17</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that it is reasonable to amend the QCC Rebate Schedule to increase the threshold in Tier 1 (from 0 to 199,999 to 0 to 299,999) and 2 (from 200,000 to 499,999 to 300,000 to 499,999) because the Exchange is seeking to encourage market

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in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in this Section II) are excluded from the Monthly Firm Fee Cap. Reversal and conversion strategy executions (as defined in this Section II) are included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(4).



participants to transact a greater number of QCC Orders. Today, a market participant does not receive a rebate for transacting less than 200,000 contracts today. With this proposal, the threshold is increased so that a market participant does not receive a rebate for transacting less than 300,000 contracts. The Exchange is also proposing to increase all rebates in Tiers 2, 3, and 4. The Tier 2 is being increased from \$0.01 to \$0.07 per contract, the Tier 3 rebate is being increased from \$0.05 to \$0.08 per contract and the Tier 3 rebate is being increased from \$0.07 to \$0.09 per contract. The Exchange believes that increasing the rebates offered for transacting QCC Orders will incentivize market participants to transact a greater number of QCC Orders. The Exchange believes that the amendments to the QCC Rebate Schedule are equitable and not unfairly discriminatory because the Exchange is proposing to uniformly increase the rebates for all qualifying market participants.

The Exchange's proposal to increase the maximum QCC Rebate that the Exchange will pay in a given month from \$275,000 to \$375,000 is reasonable because this proposal should encourage market participants to transact a greater number of QCC Orders in order to obtain higher rebates. The Exchange's proposal to increase the maximum QCC Rebate that the Exchange will pay in a given month from \$275,000 to \$375,000 is equitable and not unfairly discriminatory because the Exchange is increasing the maximum for any market participant that transacts QCC Orders and qualifies for rebates. All market participants are eligible to transact QCC Orders.

The Exchange believes that eliminating the Service Fees applicable to QCC Orders when the Specialist or Market Maker has reached the Monthly Market Maker Cap (\$0.07 Service Fee) or when a Firm has reached the Monthly Firm Fee Cap (\$0.01

Service Fee) is reasonable because it should also incentivize Specialists, Market Makers and Firms to transact a greater number of QCC Orders because no Service Fee will be assessed once the applicable monthly cap has been reached by these market participants.

The Exchange believes that the elimination of the Service Fees is equitable and not unfairly discriminatory because the Exchange is proposing to uniformly not assess a Service Fee on QCC Transactions to any market participant. Today, only Specialists, Market Makers and Firms are assessed Service Fees on QCC Orders and those Service Fees are being eliminated. By eliminating the Services Fees applicable to QCC Orders when the Specialist or Market Maker has reached the Monthly Market Maker Cap (\$0.07 Service Fee) or when a Firm has reached the Monthly Firm Fee Cap (\$0.01 Service Fee), the Exchange would not assess transaction fees to Specialists, Market Makers and Firms once the respective caps are reached by these market participants. Customers are not assessed transaction fees in Sections I or II of the Pricing Schedule because Customer order flow brings unique benefits to the market which in turn benefits all market participants. For this reason, there is no need to cap Customer transaction fees. Also, members receive rebates for qualifying Customer transactions pursuant to the Customer Rebate Program in Section B of the Pricing Schedule. A Professional and Broker Dealer will be assessed transaction fees on all transactions, because today these market participants' fees are not capped. The Exchange believes that it is equitable and not unfairly discriminatory to cap transaction fees for Specialists and Market Makers and not have them pay the additional \$0.07 per contract Service Fee on QCC Orders above the Monthly Market Maker Cap, thereby increasing the differential between these market participants and other market participants not subject to a cap (Professionals and Broker-

Dealers) because Specialists and Market Makers have burdensome quoting obligations<sup>18</sup> to the market which do not apply to Customers, Professionals, Firms and Broker-Dealers. In addition, Specialists and Market Makers are subject to Payment for Order Flow Fees<sup>19</sup> whereas Customers, Professionals, Firms and Broker-Dealers are not subject to such fees. With respect to Firms, the Exchange today caps Firm transaction fees. This proposal would no longer assess the \$0.01 per contract Service Fee for QCC Orders above the Monthly Firm Cap. While the elimination of the Service Fees will increase the differential that exists today between Firms as compared to Professionals and Broker-Dealers, as is also the case with Specialists and Market Makers that will no longer pay Service Fees above the Monthly Market Maker Cap, the Exchange notes that today Firms, Specialists and Market Makers do not pay transaction fees once they have reached the applicable cap for other types of non-QCC transactions. Today, the Exchange only

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<sup>18</sup> See Exchange Rule 1014 entitled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

<sup>19</sup> Payment for Order Flow Fees are assessed as follows: \$.25 per contract for options that are trading in the Penny Pilot Program and \$.70 per contract for other equity options. See Section II of the Pricing Schedule. Payment for Order Flow Fees are assessed on transactions resulting from Customer orders and are available to be disbursed by the Exchange according to the instructions of the Specialist units/Specialists or Directed ROTs to order flow providers who are members or member organizations, who submit, as agent, customer orders to the Exchange or non-members or non-member organizations who submit, as agent, Customer orders to the Exchange through a member or member organization who is acting as agent for those Customer orders. Specialists and Directed ROTs who participate in the Exchange's payment for order flow program are assessed a Payment for Order Flow Fee, in addition to ROTs. Therefore, the Payment for Order Flow Fee is assessed, in effect, on equity option transactions between a Customer and an ROT, a Customer and a Directed ROT, or a Customer and a Specialist. A ROT or “Registered Options Trader” 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. A ROT includes a Streaming Quote Trader (“SQT”), a Remote Streaming Quote Trader (“RSQT”) and a Non-SQT, which by definition is neither a SQT or a RSQT. See Exchange Rule 1014(b)(i) and (ii).

assesses Service Fees for QCC Orders because these fees provided the Exchange the means to defray costs incurred in providing the qualified contingent cross capability and allowed the Exchange to offer rebates to incentivize trading. At this time, the Exchange desires to assess no Service Fees for QCC Orders similar to other transactions. With respect to Firms, the Exchange today provides a similar incentive in terms of a reduction of fees for Firm electronic Options Transaction Charges in Penny Pilot and Non-Penny Pilot Options, provided the Firm has achieved certain volume requirements.<sup>20</sup> Finally, the differential created by the elimination of the Service Fee above the Monthly Firm Cap as between Firms and Professionals and Broker-Dealer is within the range of other differentials today on the Exchange's Pricing Schedule<sup>21</sup> and at other options exchanges.<sup>22</sup>

The Exchange believes that adding the tier references to the QCC Rebate Schedule is reasonable, equitable and not unfairly discriminatory because it would add clarity to the Pricing Schedule.

#### 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

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<sup>20</sup> Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options are reduced to \$0.17 per contract for a given month provided that a Firm has volume greater than 500,000 electronically-delivered contracts in a month ("Electronic Firm Fee Discount").

<sup>21</sup> Today, when a Firm reaches the Monthly Firm Cap, the differential that exists for as between a Professional or Broker-Dealer for a floor transaction and a Firm is \$0.25 as Professionals and Broker-Dealers are assessed a Floor Options Transaction Charge of \$0.25 per contract.

<sup>22</sup> CBOE currently assesses a Clearing Trading Permit Holder Proprietary an equity options fee of \$.20 per contract and a Broker-Dealer electronic order an equity options fee of \$.45 per contract. See CBOE's Fees Schedule.

Act.

The Exchange believes that its proposal to increase the threshold quantities in Tiers 2 and 3 and also increase the rebates paid for Tiers 2, 3 and 4 does not impose a burden on competition. The Exchange's proposal should continue to encourage market participants to transact a greater number of QCC Orders in order to obtain a rebate and because the Exchange is also increasing the maximum QCC Rebate number, that rebate could be larger than it is today.

The Exchange's proposal to eliminate the Service Fees for QCC Orders which is currently applied to Specialists, Market Makers and Firms when they exceed the applicable monthly cap also does not impose a burden on competition because the Exchange is eliminating a Service Fee for QCC Orders which only applied to these market participants and not Customers, Professionals and Broker-Dealers. With this proposal, no market participant would be assessed a Service Fee for QCC Orders. With respect to the increased differentials as between Firms, Specialists and Market Makers as compared to other market participants, which are created by eliminating Service Fees, the Exchange believes that the differentials are in line with other differentials that exist today on Phlx and at other options exchanges.<sup>23</sup> The differentials compensate Specialists and Market Makers for their role in the marketplace as well as their burdens.<sup>24</sup> Likewise, the differential as between Firms as compared to Professionals and Broker-Dealers is in line with other differentials that exist today between these market participants on the

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<sup>23</sup> See notes 21 and 22.

<sup>24</sup> See note 18.

Exchange's trading floor.<sup>25</sup> By offering Firms lower fees or caps in certain circumstances, the Exchange is encouraging Firms to send order flow to the Exchange. The Exchange does not believe that the elimination of the Service Fees creates an undue burden on competition but rather treats QCC Orders similar to other transactions where caps also apply and differentials exist between market participants.

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 or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange, as described in the proposal, are influenced by these 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>26</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

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<sup>25</sup> See note 21.

<sup>26</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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.

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2013-48)

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend fees and rebates applicable to Qualified Contingent Cross Orders

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 May 1, 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 fees and rebates applicable to Qualified Contingent Cross (“QCC”) orders.

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 fees and rebates applicable to both electronic QCC Orders (“eQCC”) <sup>3</sup> and Floor QCC Orders <sup>4</sup> (collectively “QCC Orders”). The Exchange believes that the proposed amendments to its pricing for QCC Orders will

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<sup>3</sup> A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. See Rule 1080(o). See also Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx-2011-47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (“QCTs”) that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

<sup>4</sup> A Floor QCC Order must: (i) be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the National Best Bid and Offer (“NBBO”); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. See Rule 1064(e). See also Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-Phlx-2011-56).

enable the Exchange to attract additional QCC Orders by increasing the amount of rebates paid for certain increased thresholds and eliminating service fees on QCC Orders.

Today, the Exchange pays rebates on QCC Orders based on the following five tier rebate schedule:

<b>Threshold</b>	<b>Rebate per Contract</b>
0 to 199,999 contracts in a month	\$0.00
200,000 to 499,999 contracts in a month	\$0.01
500,000 to 699,999 contracts in a month	\$0.05
700,000 to 999,999 contracts in a month	\$0.07
Over 1,000,000 contracts in a month	\$0.11

Today, the Exchange pays a rebate on all qualifying executed QCC Orders, as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e), except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend,<sup>5</sup> merger,<sup>6</sup> short stock interest<sup>7</sup> or reversal or conversion strategy<sup>8</sup> execution. Today, the maximum rebate the

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<sup>5</sup> A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. See Section II of the Pricing Schedule.

<sup>6</sup> A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. See Section II of the Pricing Schedule.

<sup>7</sup> A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. See Section II of the Pricing Schedule.

<sup>8</sup> Reversal and conversion strategies are types of transactions that employ calls and puts of the same strike price and the underlying stock. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock

Exchange will pay in a given month for QCC Orders is \$275,000. Today, QCC Transaction Fees for a Specialist,<sup>9</sup> Market Maker,<sup>10</sup> Professional,<sup>11</sup> Firm<sup>12</sup> and Broker-Dealer<sup>13</sup> are \$0.20 per contract.

The Exchange will continue to pay rebates on QCC Orders for all qualifying executed QCC Orders, as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e), except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend, merger, short stock interest or reversal or conversion strategy executions.

The Exchange proposes to amend the QCC Rebate Schedule by increasing the Tier 1 threshold of 0 to 199,999 to 0 to 299,999. The Exchange will continue to not pay a rebate for a QCC Order for Tier 1. The Exchange proposes to amend the Tier 2 threshold from 200,000 to 499,999 to 300,000 to 499,999 and also increase the Tier 2 rebate from \$0.01 to \$0.07 per contract. The Exchange proposes to amend the Tier 3 threshold of 500,000 to 699,999 by increasing the Tier 3 rebate from \$0.05 to \$0.08 per contract. The

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that accompany long puts and short calls sharing the same strike and expiration. See Section II of the Pricing Schedule.

<sup>9</sup> A “Specialist” is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>10</sup> A “Market Maker” includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (see Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

<sup>11</sup> The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

<sup>12</sup> The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

<sup>13</sup> The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

Exchange proposes to amend Tier 4, which has a threshold of 700,000 to 999,999, by increasing the current rebate from \$0.07 to \$0.09 per contract. The Exchange does not propose to amend the Tier 5 threshold of over 1,000,000 contracts in a month or rebate of \$0.11 per contract.

Additionally, the Exchange proposes to amend the maximum QCC Rebate that the Exchange pays in a given month. Today, the maximum QCC Rebate that the Exchange pays in a given month is \$275,000. The Exchange proposes to increase the maximum QCC Rebate to \$375,000.

As mentioned herein, QCC Transaction Fees for a Specialist, Market Maker, Professional, Firm and Broker-Dealer are \$0.20 per contract. The Exchange does not propose to amend this fee.

The Exchange proposes to eliminate certain Service Fees associated with QCC Orders. Today, for QCC Orders as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), a Service Fee of \$0.07 per side is assessed to a Specialist or Market Maker that has reached the Monthly Market Maker Cap.<sup>14</sup> The \$0.07 Service Fee applies to every contract side of a QCC Order and Floor QCC Order after a Specialist or Market Maker has reached the Monthly Market Maker Cap, except for reversal and conversion strategies executed via QCC. The Service Fee is not assessed to a Specialist

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<sup>14</sup> Specialists and Market Makers are subject to a “Monthly Market Maker Cap” of \$550,000 for: (i) electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest and reversal and conversion strategy executions (as defined in this Section II) are excluded from the Monthly Market Maker Cap.

or Market Maker that does not reach the Monthly Market Maker Cap in a particular calendar month. The Exchange proposes to eliminate the Service Fee of \$0.07 per side. Further, today for QCC Orders as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), a Service Fee of \$0.01 per side applies once a Firm has reached the Monthly Firm Fee Cap,<sup>15</sup> except for reversal and conversion strategies executed via QCC. This \$0.01 Service Fee applies to every contract side of a QCC Order and Floor QCC Order after a Firm has reached the Monthly Firm Fee Cap. The Service Fee is not assessed to a Firm that does not reach the Monthly Firm Fee Cap in a particular calendar month. The Exchange proposes to eliminate the Service Fee of \$0.01 per side. Once a Specialist or Market Maker reaches the Monthly Market Maker Cap or a Firm reaches the Monthly Firm Fee Cap in a given month those market participants would not be assessed transaction fees, including the \$0.20 per contract QCC Transaction Fee.

The Exchange proposes to insert tier numbers into the QCC Rebate Schedule for ease of reference to identify each rebate tier.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>16</sup> in general, and furthers the objectives of Section

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<sup>15</sup> Firms are subject to a maximum fee of \$75,000 (“Monthly Firm Fee Cap”). Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in this Section II) are excluded from the Monthly Firm Fee Cap. Reversal and conversion strategy executions (as defined in this Section II) are included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

<sup>16</sup> 15 U.S.C. 78f(b).

6(b)(4) of the Act,<sup>17</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that it is reasonable to amend the QCC Rebate Schedule to increase the threshold in Tier 1 (from 0 to 199,999 to 0 to 299,999) and 2 (from 200,000 to 499,999 to 300,000 to 499,999) because the Exchange is seeking to encourage market participants to transact a greater number of QCC Orders. Today, a market participant does not receive a rebate for transacting less than 200,000 contracts today. With this proposal, the threshold is increased so that a market participant does not receive a rebate for transacting less than 300,000 contracts. The Exchange is also proposing to increase all rebates in Tiers 2, 3, and 4. The Tier 2 is being increased from \$0.01 to \$0.07 per contract, the Tier 3 rebate is being increased from \$0.05 to \$0.08 per contract and the Tier 3 rebate is being increased from \$0.07 to \$0.09 per contract. The Exchange believes that increasing the rebates offered for transacting QCC Orders will incentivize market participants to transact a greater number of QCC Orders. The Exchange believes that the amendments to the QCC Rebate Schedule are equitable and not unfairly discriminatory because the Exchange is proposing to uniformly increase the rebates for all qualifying market participants.

The Exchange's proposal to increase the maximum QCC Rebate that the Exchange will pay in a given month from \$275,000 to \$375,000 is reasonable because this proposal should encourage market participants to transact a greater number of QCC Orders in order to obtain higher rebates. The Exchange's proposal to increase the maximum QCC Rebate that the Exchange will pay in a given month from \$275,000 to

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<sup>17</sup> 15 U.S.C. 78f(b)(4).

\$375,000 is equitable and not unfairly discriminatory because the Exchange is increasing the maximum for any market participant that transacts QCC Orders and qualifies for rebates. All market participants are eligible to transact QCC Orders.

The Exchange believes that eliminating the Service Fees applicable to QCC Orders when the Specialist or Market Maker has reached the Monthly Market Maker Cap (\$0.07 Service Fee) or when a Firm has reached the Monthly Firm Fee Cap (\$0.01 Service Fee) is reasonable because it should also incentivize Specialists, Market Makers and Firms to transact a greater number of QCC Orders because no Service Fee will be assessed once the applicable monthly cap has been reached by these market participants.

The Exchange believes that the elimination of the Service Fees is equitable and not unfairly discriminatory because the Exchange is proposing to uniformly not assess a Service Fee on QCC Transactions to any market participant. Today, only Specialists, Market Makers and Firms are assessed Service Fees on QCC Orders and those Service Fees are being eliminated. By eliminating the Services Fees applicable to QCC Orders when the Specialist or Market Maker has reached the Monthly Market Maker Cap (\$0.07 Service Fee) or when a Firm has reached the Monthly Firm Fee Cap (\$0.01 Service Fee), the Exchange would not assess transaction fees to Specialists, Market Makers and Firms once the respective caps are reached by these market participants. Customers are not assessed transaction fees in Sections I or II of the Pricing Schedule because Customer order flow brings unique benefits to the market which in turn benefits all market participants. For this reason, there is no need to cap Customer transaction fees. Also, members receive rebates for qualifying Customer transactions pursuant to the Customer Rebate Program in Section B of the Pricing Schedule. A Professional and Broker Dealer

will be assessed transaction fees on all transactions, because today these market participants' fees are not capped. The Exchange believes that it is equitable and not unfairly discriminatory to cap transaction fees for Specialists and Market Makers and not have them pay the additional \$0.07 per contract Service Fee on QCC Orders above the Monthly Market Maker Cap, thereby increasing the differential between these market participants and other market participants not subject to a cap (Professionals and Broker-Dealers) because Specialists and Market Makers have burdensome quoting obligations<sup>18</sup> to the market which do not apply to Customers, Professionals, Firms and Broker-Dealers. In addition, Specialists and Market Makers are subject to Payment for Order Flow Fees<sup>19</sup> whereas Customers, Professionals, Firms and Broker-Dealers are not subject to such fees. With respect to Firms, the Exchange today caps Firm transaction fees. This proposal would no longer assess the \$0.01 per contract Service Fee for QCC Orders above the

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<sup>18</sup> See Exchange Rule 1014 entitled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

<sup>19</sup> Payment for Order Flow Fees are assessed as follows: \$.25 per contract for options that are trading in the Penny Pilot Program and \$.70 per contract for other equity options. See Section II of the Pricing Schedule. Payment for Order Flow Fees are assessed on transactions resulting from Customer orders and are available to be disbursed by the Exchange according to the instructions of the Specialist units/Specialists or Directed ROTs to order flow providers who are members or member organizations, who submit, as agent, customer orders to the Exchange or non-members or non-member organizations who submit, as agent, Customer orders to the Exchange through a member or member organization who is acting as agent for those Customer orders. Specialists and Directed ROTs who participate in the Exchange's payment for order flow program are assessed a Payment for Order Flow Fee, in addition to ROTs. Therefore, the Payment for Order Flow Fee is assessed, in effect, on equity option transactions between a Customer and an ROT, a Customer and a Directed ROT, or a Customer and a Specialist. A ROT or "Registered Options Trader" 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. A ROT includes a Streaming Quote Trader ("SQT"), a Remote Streaming Quote Trader ("RSQT") and a Non-SQT, which by definition is neither a SQT or a RSQT. See Exchange Rule 1014(b)(i) and (ii).



Monthly Firm Cap. While the elimination of the Service Fees will increase the differential that exists today between Firms as compared to Professionals and Broker-Dealers, as is also the case with Specialists and Market Makers that will no longer pay Service Fees above the Monthly Market Maker Cap, the Exchange notes that today Firms, Specialists and Market Makers do not pay transaction fees once they have reached the applicable cap for other types of non-QCC transactions. Today, the Exchange only assesses Service Fees for QCC Orders because these fees provided the Exchange the means to defray costs incurred in providing the qualified contingent cross capability and allowed the Exchange to offer rebates to incentivize trading. At this time, the Exchange desires to assess no Service Fees for QCC Orders similar to other transactions. With respect to Firms, the Exchange today provides a similar incentive in terms of a reduction of fees for Firm electronic Options Transaction Charges in Penny Pilot and Non-Penny Pilot Options, provided the Firm has achieved certain volume requirements.<sup>20</sup> Finally, the differential created by the elimination of the Service Fee above the Monthly Firm Cap as between Firms and Professionals and Broker-Dealer is within the range of other differentials today on the Exchange's Pricing Schedule<sup>21</sup> and at other options

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<sup>20</sup> Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options are reduced to \$0.17 per contract for a given month provided that a Firm has volume greater than 500,000 electronically-delivered contracts in a month ("Electronic Firm Fee Discount").

<sup>21</sup> Today, when a Firm reaches the Monthly Firm Cap, the differential that exists for as between a Professional or Broker-Dealer for a floor transaction and a Firm is \$0.25 as Professionals and Broker-Dealers are assessed a Floor Options Transaction Charge of \$0.25 per contract.

exchanges.<sup>22</sup>

The Exchange believes that adding the tier references to the QCC Rebate Schedule is reasonable, equitable and not unfairly discriminatory because it would add clarity to the Pricing Schedule.

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 believes that its proposal to increase the threshold quantities in Tiers 2 and 3 and also increase the rebates paid for Tiers 2, 3 and 4 does not impose a burden on competition. The Exchange's proposal should continue to encourage market participants to transact a greater number of QCC Orders in order to obtain a rebate and because the Exchange is also increasing the maximum QCC Rebate number, that rebate could be larger than it is today.

The Exchange's proposal to eliminate the Service Fees for QCC Orders which is currently applied to Specialists, Market Makers and Firms when they exceed the applicable monthly cap also does not impose a burden on competition because the Exchange is eliminating a Service Fee for QCC Orders which only applied to these market participants and not Customers, Professionals and Broker-Dealers. With this proposal, no market participant would be assessed a Service Fee for QCC Orders. With respect to the increased differentials as between Firms, Specialists and Market Makers as

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<sup>22</sup> CBOE currently assesses a Clearing Trading Permit Holder Proprietary an equity options fee of \$.20 per contract and a Broker-Dealer electronic order an equity options fee of \$.45 per contract. See CBOE's Fees Schedule.

compared to other market participants, which are created by eliminating Service Fees, the Exchange believes that the differentials are in line with other differentials that exist today on Phlx and at other options exchanges.<sup>23</sup> The differentials compensate Specialists and Market Makers for their role in the marketplace as well as their burdens.<sup>24</sup> Likewise, the differential as between Firms as compared to Professionals and Broker-Dealers is in line with other differentials that exist today between these market participants on the Exchange's trading floor.<sup>25</sup> By offering Firms lower fees or caps in certain circumstances, the Exchange is encouraging Firms to send order flow to the Exchange. The Exchange does not believe that the elimination of the Service Fees creates an undue burden on competition but rather treats QCC Orders similar to other transactions where caps also apply and differentials exist between market participants.

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 or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange, as described in the proposal, are influenced by these 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.

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<sup>23</sup> See notes 21 and 22.

<sup>24</sup> See note 18.

<sup>25</sup> See note 21.

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>26</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-2013-48 on the subject line.

Paper comments:

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<sup>26</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-2013-48. 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-2013-48 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>27</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>27</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**

\* \* \* \* \*

**II. Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed<sup>9</sup>)**

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• QCC Transaction Fees for a Specialist, Market Maker, Professional, Firm and Broker-Dealer are \$0.20 per contract. QCC Transaction Fees apply to QCC Orders, as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e). A rebate, as specified in the below QCC Rebate Schedule, will be paid for all qualifying executed QCC Orders, as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e), except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend, merger, short stock interest or reversal or conversion strategy execution[s] (as defined in Section II).

**QCC Rebate Schedule**

<b><u>Tier</u></b>	<b>Threshold</b>	<b>Rebate per Contract</b>
<u>Tier 1</u>	0 to [1]299,999 contracts in a month	\$0.00
<u>Tier 2</u>	[2]300,000 to 499,999 contracts in a month	\$0.0[1]7
<u>Tier 3</u>	500,000 to 699,999 contracts in a month	\$0.0[5]8
<u>Tier 4</u>	700,000 to 999,999 contracts in a month	\$0.0[7]9
<u>Tier 5</u>	Over 1,000,000 contracts in a month	\$0.11

The maximum QCC Rebate to be paid in a given month will not exceed \$[2]375,000.

• Specialists and Market Makers are subject to a “Monthly Market Maker Cap” of \$550,000 for: (i) electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest and reversal and conversion strategy executions (as defined in this Section II) will be excluded from the Monthly Market Maker Cap. In addition, Specialists or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Market Maker Cap will be assessed a \$0.16 per contract fee. [For QCC Orders as defined in Exchange

Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), a Service Fee of \$0.07 per side will apply once a Specialist or Market Maker has reached the Monthly Market Maker Cap. This \$0.07 Service Fee will apply to every contract side of the QCC Order and Floor QCC Order after a Specialist or Market Maker has reached the Monthly Market Maker Cap, except for reversal and conversion strategies executed via QCC. The Service Fee will not be assessed to a Specialist or Market Maker that does not reach the Monthly Market Maker Cap in a particular calendar month.]

- Firms are subject to a maximum fee of \$75,000 (“Monthly Firm Fee Cap”). Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in this Section II) will be excluded from the Monthly Firm Fee Cap. Reversal and conversion strategy executions (as defined in this Section II) will be included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap. Member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Monthly Firm Fee Cap. [For QCC Orders as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), a Service Fee of \$0.01 per side will apply once a Firm has reached the Monthly Firm Fee Cap, except for reversal and conversion strategies executed via QCC. This \$0.01 Service Fee will apply to every contract side of the QCC Order and Floor QCC Order after a Firm has reached the Monthly Firm Fee Cap. The Service Fee will not be assessed to a Firm that does not reach the Monthly Firm Fee Cap in a particular calendar month.]

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