

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 27	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2013 - * 60	Amendment No. (req. for Amendments *)
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Filing by NASDAQ OMX PHLX LLC.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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	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"/>
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Description

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

Proposed changes to its schedule of fees and rebates for the execution of quotes and orders on NASDAQ OMX PSX

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 * John Last Name * Yetter

Title * Vice President

E-mail * john.yetter@nasdaqomx.com

Telephone * (301) 978-8497 Fax (301) 978-8472

Signature

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

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

(Title *)

Date 05/31/2013 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

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

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

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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 Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) proposed changes to its schedule of fees and rebates for the execution of quotes and orders on NASDAQ OMX PSX (“PSX”).

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of Phlx pursuant to authority delegated by the Board of Directors of Phlx on July 10, 2012. Phlx staff will advise the Board of Directors of Phlx of any action taken pursuant to delegated authority. No other action by Phlx is necessary for the filing of the rule change. Phlx proposes to implement the change on June 3, 2013.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

Phlx is proposing two modifications to its schedule of fees and rebates for transactions occurring on PSX.³ First, the Exchange currently charges a fee of \$0.00275 per share executed for orders in securities listed on The NASDAQ Stock Market (“NASDAQ”) or the New York Stock Exchange (“NYSE”) entered through a PSX market participant identifier (“MPID”) through which a member organization provides an average daily volume of 10,000 or more shares of liquidity during the month. On May 1, 2013, Phlx submitted a proposed rule change that would have, among other things, set the applicable fee for this volume tier at \$0.0028 per share executed.⁴ When that proposed rule change was rejected for unrelated reasons, Phlx submitted another proposed rule change to modify fees on May 3, 2013.⁵ Because, however, the change filed on May 3 did not apply retroactively to May 1, Phlx determined that it would be advisable to set the applicable fee at \$0.00275 per share executed for the month of May, to reflect the fact that member organizations qualifying for the tier would be paying the pre-existing higher rate of \$0.0030 per share executed for transactions occurring on May 1 and 2. Phlx is now proposing to set the applicable fee at the originally intended rate of \$0.0028 per share executed.

³ The changes apply to securities priced at \$1 or more per share.

⁴ SR-Phlx-2013-47 (May 1, 2013).

⁵ Securities Exchange Act Release No. 69588 (May 15, 2013), 78 FR 29801 (May 21, 2013) (SR-Phlx-2013-51).

Second, the Exchange proposes to modify its rebate tier of \$0.0028 per share executed for displayed quotes/orders entered by a member organization that provides an average daily volume of 2 million or more shares of liquidity during the month by also requiring that (i) the quote/order is entered through an MPID through which the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours⁶ in the security that is the subject of the quote/order, or (ii) the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in 500 or more securities. A member organization is not required to register as a PSX Market Maker in order to qualify for the pricing tier. Rather, the trading data compiled by the Exchange's systems on an ongoing basis allow it to determine which member organizations and MPIDs satisfy the requirements for the tier, and Phlx will use this information to determine the applicable rebate rate to reflect in each member organization's monthly bill. To the extent that a member organization satisfies the requirements for the tier during a particular month, the rebate will apply throughout that month.

The overall purpose of this change is to use financial incentives to encourage member organizations to increase the extent to which they choose to offer displayed

⁶ Phlx is adding a footnote to the fee schedule defining regular market hours to mean "9:30 a.m. through 4:00 p.m. Eastern Time, or such shorter period as may be designated by the Exchange on a day when PSX closes early" (e.g., the day after Thanksgiving).

liquidity at the inside market through PSX.⁷ In doing so, the Exchange hopes to increase the attractiveness of PSX as a trading venue and benefit all of its market participants by increasing the extent to which liquidity is available on PSX at or near the national best bid and/or national best offer. This pricing tier is similar to programs that are in effect at NASDAQ and NASDAQ OMX BX (“BX”) as well as similar programs for options that have been in effect at other national securities exchanges, under which the availability of a particular fee or rebate is conditioned upon the extent to which quotes/orders are at or near the inside market.⁸

⁷ In its “Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010” (February 18, 2011) (available at http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/jacreport_021811.pdf), the Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues recommend that the Commission “consider encouraging, through incentives or regulation, persons who regularly implement market maker strategies to maintain best buy and sell quotations which are ‘reasonably related to the market,’” noting that such “measures could certainly include differential pricing.” Phlx believes that this proposed rule change expands on this recommendation by providing incentives for all member organizations, whether or not registered as market makers, to maintain buy and sell quotations at the inside market for a significant portion of the trading day.

⁸ See NASDAQ Rule 7014(g) and BX Rule 7018(a). See also Securities Exchange Act Release No. 62507 (July 15, 2010), 75 FR 42802 (July 22, 2010) (SR-ISE-2010-68); Securities Exchange Act Release No. 65076 (August 9, 2011), 76 FR 50525 (August 15, 2011) (SR-BATS-2011-024). Phlx also notes that to the extent that the proposed modification to the tier takes account of a member organization’s time at the inside market, it requires the Exchange to perform calculations similar to those performed in connection with its Excess Order Fee, which weights orders differently for purposes of calculating a fee depending on the extent to which the price of an order deviates from the inside market. See NASDAQ OMX PHLX Pricing Schedule, Section VIII, paragraph (c). See also NASDAQ Rule 7018(m), BX Rule 7018(d).

b. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal to condition the availability of a rebate tier of \$0.0028 per share executed upon the satisfaction of stipulated requirements for volume and extent of time with quotes/orders at the national best bid and/or national best offer is reasonable because it will condition the availability of a higher rebate tier on the extent to which a member organization makes significant contributions to PSX and its market quality by providing liquidity in the aggregate and by maintaining trading interest at prices favorable to market participants on the opposite side of the market. Moreover, the proposed change is consistent with an equitable allocation of fees because the rebate is provided to member organizations that benefit other market participants through high levels of liquidity provision and consistent quoting at the NBBO. In instances where a member organization's contribution to PSX's time at the inside is limited to a small number of securities, the rebate is allocated solely to transactions in the securities where the member organization achieves time at the inside requirements. Conversely, where the member organization makes notable market quality contributions across 500 securities, the rebate

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

is allocated to all of the member organization's displayed quotes/orders, to reflect the more significant contribution of the member organization to supporting transactions at best prices and PSX's overall attractiveness as a trading venue. The proposal is not unreasonably discriminatory because the rebate is consistent with the benefits provided by market participants receiving it, and because the Exchange offers alternative means to receive a rebate that is only slightly lower (\$0.0026 per share executed) and that has very modest liquidity requirements associated with it. The change does not result in any burden on competition that is not necessary or appropriate; rather, the change will promote competition by using pricing incentives to encourage market participants to quote at the inside market to a greater extent, thereby increasing the attractiveness of PSX as a trading venue. Although the tier allows members qualifying for it to receive a higher rebate than other market participants, this does not unduly burden competition because the difference between the applicable rebate and the next lowest rebate is only \$0.0002 per share executed, and Phlx believes that the difference is commensurate with the benefits provided through satisfaction of the tier's volume and quoting requirements.

The change with respect to the fee charged for orders in securities listed on NASDAQ or NYSE that are entered through a PSX MPID through which a member organization provides an average daily volume of 10,000 or more shares of liquidity during the month is reasonable because it reflects a small increase of \$0.00005 per share executed. Moreover, the fee in question is consistent with the requirements of SEC Rule 610(c) under Regulation NMS.¹¹ In adopting that rule, the Commission found that fees not in excess of \$0.0030 per share executed would promote the objective of equal

¹¹ 17 CFR 242.610(c).

regulation and preventing excessive fees.¹² The change is consistent with an equitable allocation of fees because the modified fee applicable to the volume tier in question remains lower than the fee charged to member organizations not achieving the tier, and therefore continues to provide a financial incentive for member organizations to achieve higher volume levels at PSX. The change is not unfairly discriminatory because the resulting fee is not higher than the fee that other members may achieve through the use of routable orders. Finally, the fee change does not unduly burden competition because affected member organizations will continue to pay an access fee that is lower than the base rate of \$0.0030 per share executed, and therefore their ability to compete will not be impacted; rather, they will continue to pay a comparatively lower fee that reflects a volume-based discount, conceptually similar to volume-based pricing incentives that are provided by numerous other trading venues.

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

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.¹³ Phlx notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, Phlx must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges.

¹² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37596 (June 29, 2005).

¹³ 15 U.S.C. 78f(b)(8).

Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, Phlx believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, Phlx is instituting a small increase to one fee and imposing conditions upon the availability of an enhanced rebate tier. If the changes are unattractive to market participants, it is likely that PSX will fail to increase its share of executions above its current low level. Accordingly, Phlx does not believe that the changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁴ Phlx has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

The proposal to condition the \$0.0028 rebate tier on the extent to which a market participant has quotes/orders at the inside market is similar to programs that are in effect

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

at NASDAQ and BX as well as similar programs for options that have been in effect at other national securities exchanges, under which the availability of a particular fee or rebate is conditioned upon the extent to which quotes/orders are at or near the inside market.¹⁵

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

5. Text of the proposed rule change.

¹⁵ See NASDAQ Rule 7014(g) and BX Rule 7018(a). See also Securities Exchange Act Release No. 62507 (July 15, 2010), 75 FR 42802 (July 22, 2010) (SR-ISE-2010-68); Securities Exchange Act Release No. 65076 (August 9, 2011), 76 FR 50525 (August 15, 2011) (SR-BATS-2011-024). Phlx also notes that to the extent that the proposed modification to the tier takes account of a member organization's time at the inside market, it requires the Exchange to perform calculations similar to those performed in connection with its Excess Order Fee, which weights orders differently for purposes of calculating a fee depending on the extent to which the price of an order deviates from the inside market. See NASDAQ OMX PHLX Pricing Schedule, Section VIII, paragraph (c). See also NASDAQ Rule 7018(m), BX Rule 7018(d).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2013-60)

June __, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change to the Schedule of Fees and Rebates for Execution of Quotes and Orders on NASDAQ OMX PSX

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

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

The Exchange proposes changes to its schedule of fees and rebates for execution of quotes and orders on NASDAQ OMX PSX (“PSX”). Phlx proposes to implement the proposed rule change on June 3, 2013. The text of the proposed rule change is available on the Exchange’s Website at

<http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

Phlx is proposing two modifications to its schedule of fees and rebates for transactions occurring on PSX.³ First, the Exchange currently charges a fee of \$0.00275 per share executed for orders in securities listed on The NASDAQ Stock Market (“NASDAQ”) or the New York Stock Exchange (“NYSE”) entered through a PSX market participant identifier (“MPID”) through which a member organization provides an average daily volume of 10,000 or more shares of liquidity during the month. On May 1, 2013, Phlx submitted a proposed rule change that would have, among other things, set the applicable fee for this volume tier at \$0.0028 per share executed.⁴ When that proposed rule change was rejected for unrelated reasons, Phlx submitted another proposed rule change to modify fees on May 3, 2013.⁵ Because, however, the change filed on May 3 did not apply retroactively to May 1, Phlx determined that it would be advisable to set the

³ The changes apply to securities priced at \$1 or more per share.

⁴ SR-Phlx-2013-47 (May 1, 2013).

⁵ Securities Exchange Act Release No. 69588 (May 15, 2013), 78 FR 29801 (May 21, 2013) (SR-Phlx-2013-51).

applicable fee at \$0.00275 per share executed for the month of May, to reflect the fact that member organizations qualifying for the tier would be paying the pre-existing higher rate of \$0.0030 per share executed for transactions occurring on May 1 and 2. Phlx is now proposing to set the applicable fee at the originally intended rate of \$0.0028 per share executed.

Second, the Exchange proposes to modify its rebate tier of \$0.0028 per share executed for displayed quotes/orders entered by a member organization that provides an average daily volume of 2 million or more shares of liquidity during the month by also requiring that (i) the quote/order is entered through an MPID through which the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours⁶ in the security that is the subject of the quote/order, or (ii) the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in 500 or more securities. A member organization is not required to register as a PSX Market Maker in order to qualify for the pricing tier. Rather, the trading data compiled by the Exchange's systems on an ongoing basis allow it to determine which member organizations and MPIDs satisfy the requirements for the tier, and Phlx will use this information to determine the applicable rebate rate to reflect in each member organization's monthly bill. To the extent that a member organization satisfies the

⁶ Phlx is adding a footnote to the fee schedule defining regular market hours to mean "9:30 a.m. through 4:00 p.m. Eastern Time, or such shorter period as may be designated by the Exchange on a day when PSX closes early" (e.g., the day after Thanksgiving).

requirements for the tier during a particular month, the rebate will apply throughout that month.

The overall purpose of this change is to use financial incentives to encourage member organizations to increase the extent to which they choose to offer displayed liquidity at the inside market through PSX.⁷ In doing so, the Exchange hopes to increase the attractiveness of PSX as a trading venue and benefit all of its market participants by increasing the extent to which liquidity is available on PSX at or near the national best bid and/or national best offer. This pricing tier is similar to programs that are in effect at NASDAQ and NASDAQ OMX BX (“BX”) as well as similar programs for options that have been in effect at other national securities exchanges, under which the availability of a particular fee or rebate is conditioned upon the extent to which quotes/orders are at or near the inside market.⁸

⁷ In its “Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010” (February 18, 2011) (available at http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/jacreport_021811.pdf), the Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues recommend that the Commission “consider encouraging, through incentives or regulation, persons who regularly implement market maker strategies to maintain best buy and sell quotations which are ‘reasonably related to the market,’” noting that such “measures could certainly include differential pricing.” Phlx believes that this proposed rule change expands on this recommendation by providing incentives for all member organizations, whether or not registered as market makers, to maintain buy and sell quotations at the inside market for a significant portion of the trading day.

⁸ See NASDAQ Rule 7014(g) and BX Rule 7018(a). See also Securities Exchange Act Release No. 62507 (July 15, 2010), 75 FR 42802 (July 22, 2010) (SR-ISE-2010-68); Securities Exchange Act Release No. 65076 (August 9, 2011), 76 FR 50525 (August 15, 2011) (SR-BATS-2011-024). Phlx also notes that to the extent that the proposed modification to the tier takes account of a member organization’s time at the inside market, it requires the Exchange to perform calculations similar to those performed in connection with its Excess Order Fee, which weights orders differently for purposes of calculating a fee depending on the extent to which the price of an order deviates from the inside market. See

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal to condition the availability of a rebate tier of \$0.0028 per share executed upon the satisfaction of stipulated requirements for volume and extent of time with quotes/orders at the national best bid and/or national best offer is reasonable because it will condition the availability of a higher rebate tier on the extent to which a member organization makes significant contributions to PSX and its market quality by providing liquidity in the aggregate and by maintaining trading interest at prices favorable to market participants on the opposite side of the market. Moreover, the proposed change is consistent with an equitable allocation of fees because the rebate is provided to member organizations that benefit other market participants through high levels of liquidity provision and consistent quoting at the NBBO. In instances where a member organization's contribution to PSX's time at the inside is limited to a small number of securities, the rebate is allocated solely to transactions in the securities where the member organization achieves time at the inside requirements. Conversely, where the member

NASDAQ OMX PHLX Pricing Schedule, Section VIII, paragraph (c). See also NASDAQ Rule 7018(m), BX Rule 7018(d).

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

organization makes notable market quality contributions across 500 securities, the rebate is allocated to all of the member organization's displayed quotes/orders, to reflect the more significant contribution of the member organization to supporting transactions at best prices and PSX's overall attractiveness as a trading venue. The proposal is not unreasonably discriminatory because the rebate is consistent with the benefits provided by market participants receiving it, and because the Exchange offers alternative means to receive a rebate that is only slightly lower (\$0.0026 per share executed) and that has very modest liquidity requirements associated with it. The change does not result in any burden on competition that is not necessary or appropriate; rather, the change will promote competition by using pricing incentives to encourage market participants to quote at the inside market to a greater extent, thereby increasing the attractiveness of PSX as a trading venue. Although the tier allows members qualifying for it to receive a higher rebate than other market participants, this does not unduly burden competition because the difference between the applicable rebate and the next lowest rebate is only \$0.0002 per share executed, and Phlx believes that the difference is commensurate with the benefits provided through satisfaction of the tier's volume and quoting requirements.

The change with respect to the fee charged for orders in securities listed on NASDAQ or NYSE that are entered through a PSX MPID through which a member organization provides an average daily volume of 10,000 or more shares of liquidity during the month is reasonable because it reflects a small increase of \$0.00005 per share executed. Moreover, the fee in question is consistent with the requirements of SEC Rule 610(c) under Regulation NMS.¹¹ In adopting that rule, the Commission found that fees

¹¹ 17 CFR 242.610(c).

not in excess of \$0.0030 per share executed would promote the objective of equal regulation and preventing excessive fees.¹² The change is consistent with an equitable allocation of fees because the modified fee applicable to the volume tier in question remains lower than the fee charged to member organizations not achieving the tier, and therefore continues to provide a financial incentive for member organizations to achieve higher volume levels at PSX. The change is not unfairly discriminatory because the resulting fee is not higher than the fee that other members may achieve through the use of routable orders. Finally, the fee change does not unduly burden competition because affected member organizations will continue to pay an access fee that is lower than the base rate of \$0.0030 per share executed, and therefore their ability to compete will not be impacted; rather, they will continue to pay a comparatively lower fee that reflects a volume-based discount, conceptually similar to volume-based pricing incentives that are provided by numerous other trading venues.

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

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.¹³ Phlx notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, Phlx must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been

¹² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37596 (June 29, 2005).

¹³ 15 U.S.C. 78f(b)(8).

exempted from compliance with the statutory standards applicable to exchanges.

Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, Phlx believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, Phlx is instituting a small increase to one fee and imposing conditions upon the availability of an enhanced rebate tier. If the changes are unattractive to market participants, it is likely that PSX will fail to increase its share of executions above its current low level. Accordingly, Phlx does not believe that the changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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) of the Act¹⁴ and paragraph (f) of Rule 19b-4 thereunder.¹⁵ 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.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2013-60 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2013-60. 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-2013-60 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.¹⁶

Kevin M O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

NASDAQ OMX PHLX LLC¹ PRICING SCHEDULE

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

¹ PHLX[®] is a registered trademark of The NASDAQ OMX Group, Inc.

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VIII. NASDAQ OMX PSX FEES

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Order Execution and Routing

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

(1) Fees for Execution of Quotes/Orders in Nasdaq-Listed Securities

Charge to member organization entering order that executes in NASDAQ OMX PSX:	<p>[\$0.00275] <u>\$0.0028</u> per share executed for orders entered through a NASDAQ OMX PSX market participant identifier ("MPID") through which the member organization provides an average daily volume of 10,000 or more shares of liquidity during the month</p> <p>\$0.0028 per share executed for an order that is designated as eligible for routing</p> <p>\$0.0030 per share executed for other orders</p>
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Credit to member organization providing liquidity through the NASDAQ OMX PSX System:

Displayed Quote/Order: \$0.0028 per share executed for Quotes/Orders entered by a member organization that provides an average daily volume of 2 million or more shares of liquidity during the month; provided that (i) the Quote/Order is entered through a NASDAQ OMX PSX MPID through which the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours* in the security that is the subject of the Quote/Order, or (ii) the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in 500 or more securities

\$0.0026 per share executed for Quotes/Orders entered through a NASDAQ OMX PSX MPID through which the member organization provides an average daily volume of 100,000 or more shares of liquidity during the month

\$0.0020 per share executed for other Quotes/Orders

Non-Displayed Order: \$0.0010 per share executed for a midpoint pegged order or a midpoint peg post-only order (a “midpoint order”)

\$0.0005 per share executed for other non-displayed orders

(2) Fees for Execution of Quotes/Orders in Securities Listed on the New York Stock Exchange (“NYSE”)

Charge to member organization entering order that executes in NASDAQ OMX PSX: [\$0.00275] \$0.0028 per share executed for orders entered through a NASDAQ OMX PSX MPID through which the member organization provides an average daily volume of 10,000 or more shares of

liquidity during the month

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

\$0.0030 per share executed for other orders

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

Displayed Quote/Order: \$0.0028 per share executed for Quotes/Orders entered by a member organization that provides an average daily volume of 2 million or more shares of liquidity during the month; provided that (i) the Quote/Order is entered through a NASDAQ OMX PSX MPID through which the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours* in the security that is the subject of the Quote/Order, or (ii) the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in 500 or more securities

\$0.0026 per share executed for Quotes/Orders entered through a NASDAQ OMX PSX MPID through which the member organization provides an average daily volume of 100,000 or more shares of liquidity during the month

\$0.0020 per share executed for other Quotes/Orders

Non-Displayed Order: \$0.0010 per share executed for midpoint orders

\$0.0005 per share executed for other non-displayed orders

(3) Fees for Execution of Orders in Securities Listed on Exchanges other than Nasdaq and NYSE

Charge to member organization entering order that executes in NASDAQ OMX PSX: \$0.0025 per share executed for orders entered through a NASDAQ OMX PSX MPID through which the member organization provides an average daily volume of 10,000 or more shares of liquidity during the month

\$0.0025 per share executed for an order that is designated as eligible for routing

\$0.0030 per share executed for other orders

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

Displayed Quote/Order: \$0.0028 per share executed for Quotes/Orders entered by a member organization that provides an average daily volume of 2 million or more shares of liquidity during the month; provided that (i) the Quote/Order is entered through a NASDAQ OMX PSX MPID through which the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours* in the security that is the subject of the Quote/Order, or (ii) the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in 500 or more securities

\$0.0026 per share executed for Quotes/Orders entered through a NASDAQ OMX PSX MPID through which the member organization provides an average daily volume of 100,000 or more shares of liquidity during the month

\$0.0020 per share executed for other Quotes/Orders

Non-Displayed Order:	\$0.0010 per share executed for midpoint orders
	\$0.0005 per share executed for other non-displayed orders

(4) Fees for Routing of Orders in All Securities

Charge to member organization entering PSTG or PSCN order that executes in a venue other than the NASDAQ OMX PSX System:	\$0.0025 per share executed at NYSE
	Credit of \$0.0014 per share executed at NASDAQ OMX BX
	\$0.0028 per share executed in other venues

Charge to member organization entering PMOP order that executes in a venue other than the NASDAQ OMX PSX System:	\$0.0027 per share executed at NYSE
	\$0.0031 per share executed at venues other than NYSE

Charge to member organization entering PTFY order that executes in a venue other than the NASDAQ OMX PSX System:	\$0.0024 per share executed at NYSE
	\$0.0005 per share executed at venues other than NYSE, NASDAQ or NASDAQ OMX BX
	\$0.0028 per share executed at NASDAQ
	Credit of \$0.0014 per share executed at NASDAQ OMX BX

Charge to member organization entering PCRT order that executes in a venue other than the NASDAQ OMX PSX System:	\$0.0028 per share executed at NASDAQ
	Credit of \$0.0014 per share executed at NASDAQ OMX BX

Charge or credit to member organization entering XDRK order:	None
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Charge or credit to member Credit of \$0.0014 per share executed at NASDAQ
organization entering XCST OMX BX
order:

For shares executed at a venue other than NASDAQ
OMX BX, none

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

* “Regular market hours” means 9:30 a.m. through 4:00 p.m. Eastern Time, or such shorter period as may be designated by the Exchange on a day when PSX closes early.

(b) – (c) No change.

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