

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 * <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 Excess Order Fee under Section VIII of the Phlx Pricing Schedule

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 *)
 Executive Vice President and General Counsel

Date 07/26/2013
 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.

Edward S Knight,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

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

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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 Excess Order Fee under Section VIII of the Phlx Pricing Schedule.

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 17, 2013. Exchange 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 proposed rule change on August 1, 2013.

Questions regarding this rule filing may be directed to John M. Yetter, Vice President and Deputy General Counsel, NASDAQ OMX, (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

In 2012, Phlx introduced an Excess Order Fee, imposed on NASDAQ OMX PSX ("PSX") market participant identifiers ("MPIDs") that have characteristics indicative of inefficient order entry practices.³ As Phlx explained at the time, inefficient order entry practices may place excessive burdens on the systems of Phlx and its member organizations and may negatively impact the usefulness and life cycle cost of market data.⁴ Market participants that flood the market with orders that are rapidly cancelled or that are priced away from the inside market do little to support meaningful price discovery.

In general, the determination of whether to impose the fee on a particular MPID has been made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the national best bid or offer ("NBBO"), and (ii) orders that execute in whole or in part. The fee has been imposed on MPIDs with an "Order Entry Ratio" of more than 100. The Order Entry Ratio is calculated, and the Excess Order Fee imposed, on a monthly basis. Phlx is now proposing to modify the fee, such that it will

³ Securities Exchange Act Release Nos. 67004 (May 17, 2012), 77 FR 30581 (May 23, 2012) (SR-Phlx-2012-64) (establishing fee); 67271 (June 27, 2012), 77 FR 39537 (July 3, 2012) (SR-Phlx-2012-85) (modifying terms and conditions of fee).

⁴ See generally Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010, Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues, at 11 (February 18, 2011) ("The SEC and CFTC should also consider addressing the disproportionate impact that [high frequency trading] has on Exchange message traffic and market surveillance costs.... The Committee recognizes that there are valid reasons for algorithmic strategies to drive high cancellation rates, but we believe that this is an area that deserves further study. At a minimum, we believe that the participants of those strategies should properly absorb the externalized costs of their activity.").

be calculated and assessed on the basis of all of a member organization's trading activity on PSX, rather than on an MPID basis. The purpose of this change is to ensure that member organizations do not act in a manner inconsistent with the intent of the fee by spreading inefficient order activity across multiple MPIDs in a manner that allows the MPIDs to avoid a charge that would not be avoided if all of the member organization's activity were aggregated. Thus, the change replaces the term "MPID" with the term "member organization" throughout the text of Rule 7018(d). The rule, as amended, will operate as follows:

For each member organization, the Order Entry Ratio will be the ratio of (i) the member organization's "Weighted Order Total" to (ii) the greater of one (1) or the number of displayed, non-marketable orders⁵ sent to PSX by the member organization during the month that execute in full or in part.⁶ The Weighted Order Total is the number of displayed, non-marketable orders sent to PSX by the member organization, as adjusted by a "Weighting Factor." The applicable Weighting Factor is applied to each order based on its price in comparison to the NBBO at the time of order entry:

<u>Order's Price versus NBBO at Entry</u>	<u>Weighting Factor</u>
Less than 0.20% away	0x
0.20% to 0.99% away	1x
1.00% to 1.99% away	2x
2.00% or more away	3x

⁵ The fee focuses on displayed orders since they have the most significant impact on investor confusion and the quality of market data.

⁶ Thus, in an extreme case where no orders entered by the member organization executed, this component of the ratio would be assumed to be 1, so as to avoid the impossibility of dividing by zero.

Thus, in calculating the Weighted Order Total, an order that was more than 2.0% away from the NBBO would be equivalent to three orders that were 0.50% away. Due to the applicable Weighting Factor of 0x, orders entered less than 0.20% away from the NBBO would not be included in the Weighted Order Total, but would be included in the “executed” orders component of the Order Entry Ratio if they execute in full or part.⁷ In addition, member organizations with a daily average Weighted Order Total of less than 100,000 during the month will not be subject to the Excess Order Fee. Finally, the fee is based on orders received by Phlx during regular market hours (generally, 9:30 a.m. to 4:00 p.m.),⁸ and will exclude orders received at other times, even if they execute during regular market hours.

The following example illustrates the calculation of the Order Entry Ratio:

- A member organization enters 15,000,000 displayed, liquidity-providing orders:
 - 10,000,000 orders are entered at the NBBO. The Weighting Factor for these orders is 0x.
 - 5,000,000 orders are entered at a price that is 1.50% away from the NBBO. The Weighting Factor for these orders is 2x.

⁷ An analogous fee of The NASDAQ Stock Market LLC (“NASDAQ”) includes an exclusion from both components of the ratio for orders sent by market makers in securities in which they are registered, through the MPID applicable to the registration. Although Phlx recently adopted rules to allow market maker registration on PSX, the extent of market making to date has been limited. Accordingly, Phlx has not deemed it necessary to adopt a comparable exclusion. In the event that market maker participation in PSX increases, Phlx will evaluate the advisability of adopting an exclusion.

⁸ Regular market hours may be different in some circumstances, such as on the day after Thanksgiving, when regular market hours on all exchanges traditionally end at 1:00 p.m.

- Of the 15,000,000 orders included in the calculation, 90,000 are executed.
- The Weighted Order Total is $(10,000,000 \times 0) + (5,000,000 \times 2) = 10,000,000$. The Order Entry Ratio is $10,000,000 / 90,000 = 111$.

If a member organization has an Order Entry Ratio of more than 100, the amount of the Order Entry Fee will be calculated by determining the member organization's "Excess Weighted Orders." Excess Weighted Orders are calculated by subtracting (i) the Weighted Order Total that would result in the member organization having an Order Entry Ratio of 100 from (ii) the member organization's actual Weighted Order Total. In the example above, the Weighted Order Total that would result in an Order Entry Ratio of 100 is 9,000,000, since $9,000,000 / 90,000 = 100$. Accordingly, the Excess Weighted Orders would be $10,000,000 - 9,000,000 = 1,000,000$.

The Excess Order Fee charged to the member organization will then be determined by multiplying the "Applicable Rate" by the number of Excess Weighted Orders. The Applicable Rate is determined based on the member organization's Order Entry Ratio:

<u>Order Entry Ratio</u>	<u>Applicable Rate</u>
101 – 1,000	\$0.005
More than 1,000	\$0.01

In the example above, the Applicable Rate would be \$0.005, based on the member organization's Order Entry Ratio of 111. Accordingly, the monthly Excess Order Fee would be $1,000,000 \times \$0.005 = \$5,000$.

Phlx continues to expect that the impact of the fee, as modified, will be narrow because the change will encourage potentially affected market participants to modify their order entry practices in order to avoid the fee, thereby improving the market for all

participants. Accordingly, Phlx does not expect to earn significant revenues from the modified fee.

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.

With respect to the Excess Order Fee, Phlx stated in its original filing to institute the fee that it is reasonable because it is designed to achieve improvements in the quality of displayed liquidity and market data that will benefit all market participants. In addition, although the level of the fee may theoretically be very high, the fee is reasonable because market participants may readily avoid the fee by making improvements in their order entry practices that reduce the number of orders they enter, bring the prices of their orders closer to the NBBO, and/or increase the percentage of their orders that execute. Similarly, the change proposed herein is reasonable because it will provide further incentive to member organizations to improve order entry practices by insuring that they cannot evade the fee by spreading activity across multiple MPIDs.

For similar reasons, the fee is consistent with an equitable allocation of fees, because although the fee may apply to only a small number of market participants, the fee

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

would be applied to them in order to encourage better order entry practices that will benefit all market participants. The change is also equitable because it will further encourage better order entry practices across a wider group of market participants. Finally, Phlx believes that the fee is not unfairly discriminatory. Although the fee may apply to only a small number of market participants, it will be imposed because of the negative externalities that such market participants impose on others through inefficient order entry practices. Accordingly, Phlx believes that it is fair to impose the fee on these market participants in order to incentivize them to modify their behavior and thereby benefit the market. The change is likewise not unfairly discriminatory because it will negatively affect member organizations only if they have been evading the incentives to improve order entry practices provided by the fee.

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.¹¹ 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, while also seeking to earn a reasonable profit from its trading and routing services. Because competitors are free to modify their own fees in response, and because market

¹¹ 15 U.S.C. 78f(b)(8).

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. With respect to the change to the Excess Order Fee, Phlx believes that the change, like the original fee, will constrain market participants from pursuing certain inefficient and potentially abusive trading strategies. To the extent that this change may be construed as a burden on competition, Phlx believes that it is appropriate in order to allow Phlx to better achieve this purpose.

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,¹² 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

Not applicable.

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

Not applicable.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2013-80)

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Changes to its Excess Order Fee

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 July 26, 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 Excess Order Fee under Section VIII of the Phlx Fee Schedule. Phlx proposes to implement the proposed rule change on August 1, 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In 2012, Phlx introduced an Excess Order Fee, imposed on NASDAQ OMX PSX (“PSX”) market participant identifiers (“MPIDs”) that have characteristics indicative of inefficient order entry practices.³ As Phlx explained at the time, inefficient order entry practices may place excessive burdens on the systems of Phlx and its member organizations and may negatively impact the usefulness and life cycle cost of market data.⁴ Market participants that flood the market with orders that are rapidly cancelled or that are priced away from the inside market do little to support meaningful price discovery.

In general, the determination of whether to impose the fee on a particular MPID has been made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the national best bid or offer (“NBBO”), and (ii) orders that execute in whole or in part. The fee has been imposed on MPIDs with an “Order Entry

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⁴ See generally Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010, Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues, at 11 (February 18, 2011) (“The SEC and CFTC should also consider addressing the disproportionate impact that [high frequency trading] has on Exchange message traffic and market surveillance costs.... The Committee recognizes that there are valid reasons for algorithmic strategies to drive high cancellation rates, but we believe that this is an area that deserves further study. At a minimum, we believe that the participants of those strategies should properly absorb the externalized costs of their activity.”).

Ratio” of more than 100. The Order Entry Ratio is calculated, and the Excess Order Fee imposed, on a monthly basis. Phlx is now proposing to modify the fee, such that it will be calculated and assessed on the basis of all of a member organization’s trading activity on PSX, rather than on an MPID basis. The purpose of this change is to ensure that member organizations do not act in a manner inconsistent with the intent of the fee by spreading inefficient order activity across multiple MPIDs in a manner that allows the MPIDs to avoid a charge that would not be avoided if all of the member organization’s activity were aggregated. Thus, the change replaces the term “MPID” with the term “member organization” throughout the text of Rule 7018(d). The rule, as amended, will operate as follows:

For each member organization, the Order Entry Ratio will be the ratio of (i) the member organization’s “Weighted Order Total” to (ii) the greater of one (1) or the number of displayed, non-marketable orders⁵ sent to PSX by the member organization during the month that execute in full or in part.⁶ The Weighted Order Total is the number of displayed, non-marketable orders sent to PSX by the member organization, as adjusted by a “Weighting Factor.” The applicable Weighting Factor is applied to each order based on its price in comparison to the NBBO at the time of order entry:

<u>Order’s Price versus NBBO at Entry</u>	<u>Weighting Factor</u>
Less than 0.20% away	0x
0.20% to 0.99% away	1x
1.00% to 1.99% away	2x

⁵ The fee focuses on displayed orders since they have the most significant impact on investor confusion and the quality of market data.

⁶ Thus, in an extreme case where no orders entered by the member organization executed, this component of the ratio would be assumed to be 1, so as to avoid the impossibility of dividing by zero.

2.00% or more away 3x

Thus, in calculating the Weighted Order Total, an order that was more than 2.0% away from the NBBO would be equivalent to three orders that were 0.50% away. Due to the applicable Weighting Factor of 0x, orders entered less than 0.20% away from the NBBO would not be included in the Weighted Order Total, but would be included in the “executed” orders component of the Order Entry Ratio if they execute in full or part.⁷ In addition, member organizations with a daily average Weighted Order Total of less than 100,000 during the month will not be subject to the Excess Order Fee. Finally, the fee is based on orders received by Phlx during regular market hours (generally, 9:30 a.m. to 4:00 p.m.),⁸ and will exclude orders received at other times, even if they execute during regular market hours.

The following example illustrates the calculation of the Order Entry Ratio:

- A member organization enters 15,000,000 displayed, liquidity-providing orders:
 - 10,000,000 orders are entered at the NBBO. The Weighting Factor for these orders is 0x.

⁷ An analogous fee of The NASDAQ Stock Market LLC (“NASDAQ”) includes an exclusion from both components of the ratio for orders sent by market makers in securities in which they are registered, through the MPID applicable to the registration. Although Phlx recently adopted rules to allow market maker registration on PSX, the extent of market making to date has been limited. Accordingly, Phlx has not deemed it necessary to adopt a comparable exclusion. In the event that market maker participation in PSX increases, Phlx will evaluate the advisability of adopting an exclusion.

⁸ Regular market hours may be different in some circumstances, such as on the day after Thanksgiving, when regular market hours on all exchanges traditionally end at 1:00 p.m.

- 5,000,000 orders are entered at a price that is 1.50% away from the NBBO. The Weighting Factor for these orders is 2x.
- Of the 15,000,000 orders included in the calculation, 90,000 are executed.
- The Weighted Order Total is $(10,000,000 \times 0) + (5,000,000 \times 2) = 10,000,000$. The Order Entry Ratio is $10,000,000 / 90,000 = 111$.

If a member organization has an Order Entry Ratio of more than 100, the amount of the Order Entry Fee will be calculated by determining the member organization's "Excess Weighted Orders." Excess Weighted Orders are calculated by subtracting (i) the Weighted Order Total that would result in the member organization having an Order Entry Ratio of 100 from (ii) the member organization's actual Weighted Order Total. In the example above, the Weighted Order Total that would result in an Order Entry Ratio of 100 is 9,000,000, since $9,000,000 / 90,000 = 100$. Accordingly, the Excess Weighted Orders would be $10,000,000 - 9,000,000 = 1,000,000$.

The Excess Order Fee charged to the member organization will then be determined by multiplying the "Applicable Rate" by the number of Excess Weighted Orders. The Applicable Rate is determined based on the member organization's Order Entry Ratio:

<u>Order Entry Ratio</u>	<u>Applicable Rate</u>
101 – 1,000	\$0.005
More than 1,000	\$0.01

In the example above, the Applicable Rate would be \$0.005, based on the member organization's Order Entry Ratio of 111. Accordingly, the monthly Excess Order Fee would be $1,000,000 \times \$0.005 = \$5,000$.

Phlx continues to expect that the impact of the fee, as modified, will be narrow because the change will encourage potentially affected market participants to modify their order entry practices in order to avoid the fee, thereby improving the market for all participants. Accordingly, Phlx does not expect to earn significant revenues from the modified fee.

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.

With respect to the Excess Order Fee, Phlx stated in its original filing to institute the fee that it is reasonable because it is designed to achieve improvements in the quality of displayed liquidity and market data that will benefit all market participants. In addition, although the level of the fee may theoretically be very high, the fee is reasonable because market participants may readily avoid the fee by making improvements in their order entry practices that reduce the number of orders they enter, bring the prices of their orders closer to the NBBO, and/or increase the percentage of their orders that execute. Similarly, the change proposed herein is reasonable because it

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

will provide further incentive to member organizations to improve order entry practices by insuring that they cannot evade the fee by spreading activity across multiple MPIDs.

For similar reasons, the fee is consistent with an equitable allocation of fees, because although the fee may apply to only a small number of market participants, the fee would be applied to them in order to encourage better order entry practices that will benefit all market participants. The change is also equitable because it will further encourage better order entry practices across a wider group of market participants. Finally, Phlx believes that the fee is not unfairly discriminatory. Although the fee may apply to only a small number of market participants, it will be imposed because of the negative externalities that such market participants impose on others through inefficient order entry practices. Accordingly, Phlx believes that it is fair to impose the fee on these market participants in order to incentivize them to modify their behavior and thereby benefit the market. The change is likewise not unfairly discriminatory because it will negatively affect member organizations only if they have been evading the incentives to improve order entry practices provided by the fee.

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.¹¹ 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

¹¹ 15 U.S.C. 78f(b)(8).

competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges, while also seeking to earn a reasonable profit from its trading and routing services. 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. With respect to the change to the Excess Order Fee, Phlx believes that the change, like the original fee, will constrain market participants from pursuing certain inefficient and potentially abusive trading strategies. To the extent that this change may be construed as a burden on competition, Phlx believes that it is appropriate in order to allow Phlx to better achieve this purpose.

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 Act¹² and paragraph (f) of Rule 19b-4 thereunder.¹³ 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.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 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-2013-80 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-2013-80. 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-2013-80 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.¹⁴

Kevin M O'Neill
Deputy Secretary

¹⁴ 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 Rules

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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.

¹PHLX[®] 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) – (b) No change.

(c) Excess Order Fee

(1) To deter member organizations that are PSX Participants from inefficient order entry practices that place excessive burdens on the systems of the Exchange and other member organizations and that may negatively impact the usefulness of market data, the Exchange imposes an Excess Order Fee on [market participant identifiers ("MPIDs")] member organizations with an "Order Entry Ratio" of more than 100. The Order Entry Ratio is calculated, and the Excess Order Fee imposed, on a monthly basis. All calculations under the rule will be based on orders received by PSX during regular market hours (generally, 9:30 a.m. to 4:00 p.m.) and will exclude orders received at other times, even if they execute during regular market hours.

(2) For each [MPID] member organization, the Order Entry Ratio is the ratio of (i) the [MPID's] member organization's Weighted Order Total to (ii) the greater of one (1) or

the number of displayed, non-marketable orders sent to NASDAQ OMX PSX [through the MPID] by the member organization that execute in full or in part. The Weighted Order Total is the number of displayed, non-marketable orders sent to NASDAQ OMX PSX [through the MPID] by the member organization, as adjusted by a "Weighting Factor." The applicable Weighting Factor is applied to each order based on its price in comparison to the national best bid or best offer ("NBBO") at the time of order entry:

Order's Price versus NBBO at Entry	Weighting Factor
Less than 0.20% away	0x
0.20% to 0.99% away	1x
1.00% to 1.99% away	2x
2.00% or more away	3x

Thus, in calculating the Weighted Order Total, an order that was more than 2.0% away from the NBBO would be equivalent to three orders that were 0.50% away. Due to the applicable Weighting Factor of 0x, orders entered less than 0.20% away from the NBBO would not be included in the Weighted Order Total, but would be included in the "executed" orders component of the Order Entry Ratio if they execute in full or part. The following example illustrates the calculation of the Order Entry Ratio:

- A member organization enters 15,000,000 displayed, liquidity-providing orders:
- 10,000,000 orders are entered at the NBBO. The Weighting Factor for these orders is 0x.
- 5,000,000 orders are entered at a price that is 1.50% away from the NBBO. The Weighting Factor for these orders is 2x.
- Of the 15,000,000 orders included in the calculation, 90,000 are executed.
- The Weighted Order Total is $(10,000,000 \times 0) + (5,000,000 \times 2) = 10,000,000$. The Order Entry Ratio is $10,000,000 / 90,000 = 111$

(3) If [an MPID] a member organization has an Order Entry Ratio of more than 100, the Order Entry Fee will be calculated by determining the [MPID's] member organization's Excess Weighted Orders. Excess Weighted Orders are calculated by subtracting (i) the Weighted Order Total that would result in the [MPID] member organization having an Order Entry Ratio of 100 from (ii) the [MPID's] member organization's actual Weighted Order Total.

In the example above, the Weighted Order Total that would result in an Order Entry Ratio of 100 is 9,000,000, since $9,000,000 / 90,000 = 100$. Accordingly, the Excess Weighted Orders would be $10,000,000 - 9,000,000 = 1,000,000$.

The Excess Order Fee charged to the member organization will then be determined by multiplying the Applicable Rate by the number of Excess Weighted Orders. The

Applicable Rate is determined based on the [MPID's] member organization's Order Entry Ratio.

Order Entry Ratio	Applicable Rate
101 - 1,000	\$0.005
More than 1,000	\$0.01

In the example above, the Applicable Rate would be \$0.005, based on the [MPID's] member organization's Order Entry Ratio of 111. Accordingly, the monthly Excess Order Fee would be $1,000,000 \times \$0.005 = \$5,000$.

(4) Notwithstanding the foregoing, [MPIDs] member organizations with a daily average Weighted Order Total of less than 100,000 during the month will not be subject to the Excess Order Fee.

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