

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 26	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2013 - * 92	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"/>
			Rule		
			<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 checked="" type="checkbox"/> Section 806(e)(2) <input checked="" type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input checked="" type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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Description
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposed rule change to amend Pricing Schedule Sections II and IV.

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 * Carla Last Name * Behnfeldt
 Title * Associate General Counsel
 E-mail * carla.behnfeldt@nasdaqomx.com
 Telephone * (215) 496-5208 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 09/03/2013 Executive Vice President and General Counsel
 By Edward S. Knight
 (Name *)

Edward S Knight,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposes to amend the Exchange’s Pricing Schedule by waiving the Broker-Dealer Floor Options Transaction Charge (including the Cabinet Options Transaction Charge) as well as the Broker-Dealer FLEX transaction fee, for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur these charges or this fee for trading in their own proprietary account contra to a Customer (a “BD-Customer Facilitation”) if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of the applicable portion of the Exchange’s Pricing Schedule is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on July 17, 2013. Exchange staff will advise the Board of Directors of any action taken pursuant to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Carla Behnfeldt, Associate General Counsel, at (215) 496-5208.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule with respect to certain pricing in Section II entitled "Multiply Listed Options Fees," and in Section IV.B, entitled FLEX Transaction Fees, in the case of BD-Customer Facilitations as described below.

Broker-Dealer Floor Options Transaction Charges³

The Exchange currently assesses Broker-Dealer Floor Options Transaction Charges⁴ of \$0.25 per contract for both Penny Pilot and non-Penny Pilot options. Similarly, the Exchange assesses Firm Floor Options Transaction Charges⁵ of \$0.25 per contract for both Penny Pilot and non-Penny Pilot options, but it waives these charges for members executing facilitation orders pursuant to Exchange Rule 1064 when such

³ The Broker-Dealer Floor Options Transaction Charge and Firm Floor Options Transaction Charge in this discussion include the Cabinet Options Transaction Charge.

⁴ The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

⁵ The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC. The waiver does not apply to orders where a member is acting as agent on behalf of a non-member.

members are trading in their own proprietary account.⁶ The Exchange is now proposing to also waive the Broker-Dealer Floor Options Transaction Charge for members executing BD-Customer Facilitations if the member's BD-Customer Facilitation average daily volume exceeds 10,000 contracts per day (the "Minimum ADV") in a given month (including both FLEX and non-FLEX transactions) when such members are trading in their own proprietary account.

On occasion, a Broker-Dealer will facilitate orders on behalf of its Customers.⁷ The Broker-Dealer places both the Customer order and the Broker-Dealer's order with a floor broker for execution in open outcry. The Exchange believes that a transaction in which a Broker-Dealer facilitates a Customer order should be treated in the same manner as a Firm facilitation transaction. To qualify for the free execution, the Broker-Dealer and the Customer must have the same Phlx house account number on both the buy and sell side of the transaction. This is the same treatment that applies to pricing applicable to Firm Floor Options Transaction Charges for members executing facilitation orders when such members are trading in their own proprietary account.⁸

⁶ See Exchange Rule 1064 entitled "Crossing, Facilitation and Solicited Orders." A facilitation occurs when a floor broker holds an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. The Exchange's waiver of the Firm Floor Options Transaction Charges includes Cabinet Option Transaction Charges.

⁷ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).

⁸ As noted above, Firm Floor Options Transaction Charges are waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges).

FLEX Transaction Fees

The Exchange currently assesses Firm FLEX Transaction Fees of \$0.15 per contract as well as Broker-Dealer FLEX Transaction Fees, also \$0.15 per contract, for FLEX transactions in multiply listed options. The Exchange waives the Firm FLEX Transaction Fee for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. The Exchange is now proposing to waive the Broker-Dealer FLEX Transaction Fee as well for BD-Customer Facilitations, if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds the Minimum ADV.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that not charging a member the Broker-Dealer Floor Options Transaction Charge for transactions in which it facilitates a Customer order, provided it meets the Minimum ADV, is reasonable because it will encourage the member to facilitate Customer orders and increase participation in open outcry, which will in turn promote liquidity on the Exchange. Customer order flow brings unique benefits to the market which benefits all market participants through increased liquidity. In addition, the proposed rule change is reasonable, equitable, and not unfairly

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

discriminatory because Broker-Dealers facilitating Customer orders are performing essentially the same business as Firm facilitation orders.

The Exchange believes that not charging a member the Broker-Dealer Floor Options Transaction Charge for transactions in which it facilitates a Customer order, provided it meets the Minimum ADV, is equitable and not unfairly discriminatory because Broker-Dealers will continue to be assessed a higher fee than a Customer who pays no fee to transact Floor Penny Pilot or Non-Penny Pilot Options. Broker-Dealers will continue to be assessed higher fees than Specialists and Market Makers in Floor Penny Pilot Options and Non-Penny Pilot Options¹¹ because Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants. They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between Customers, Specialists and Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants, as well as the differing mix of orders entered. Broker-Dealers, Firms and Professionals¹² today all pay a \$0.25 per contract Floor Penny Pilot and Non-Penny Pilot Options Transaction Charge. Professionals have access to

¹¹ Specialists and Market Makers are assessed Floor Penny Pilot and Non-Penny Pilot Options Transaction Charges of \$ 0.25 per contract.

¹² 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).

more information and technological advantages as compared to Customers and Professionals do not bear the obligations of Specialists or Market Makers. Also, Professionals engage in trading activity similar to that conducted by Specialists or Market Makers. For example, Professionals continue to join bids and offers on the Exchange and thus compete for incoming order flow. For these reasons, the Exchange assesses Professionals the same Floor Options Transaction Charges as Firms and Broker-Dealers. Today, the Firm Floor Options Transaction Charge of \$0.25 per contract for both Penny Pilot and Non-Penny Pilot options, is waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. The Exchange proposes to waive the Broker-Dealer Floor Options Transaction Charge of \$0.25 per contract for both Penny Pilot and Non-Penny Pilot options for transactions in which it facilitates a Customer order, provided it meets the Minimum ADV. The Exchange believes this proposal narrows the current rate differentials between a Broker-Dealer and a Firm, where a Firm is entitled to a waiver today because the Exchange would waive the Broker-Dealer Floor Options Transaction Charge for members executing BD-Customer Facilitations if the member's BD-Customer Facilitation average daily volume exceeds 10,000 contracts per day in a given month. Offering Broker-Dealers and Firms such a waiver while not offering the waiver to Professionals is not unfairly discriminatory because unlike Firms and Broker-Dealers, Professionals do not facilitate orders as described in this proposal.

The Exchange believes that waiving the Broker-Dealer Floor Options Transaction Charge for members executing BD-Customer Facilitations if the member's BD-Customer Facilitation average daily volume exceeds 10,000 contracts per day in a given month as

compared to the electronic Options Transaction Charges in both Penny Pilot and Non-Penny Pilot options is reasonable, equitable and not unfairly discriminatory because these fees recognize the distinction between the floor order entry model and the electronic model and the proposed fees respond to competition along the same lines.¹³ Floor participants incur costs associated with accessing the floor, i.e. need for a floor broker, and other costs which are not born by electronic members. Today, the Exchange assesses different fees for electronic as compared to floor transactions for Professionals, Specialists¹⁴ and Market Makers¹⁵, Broker-Dealers and Firms in Section II of the Pricing Schedule.

The Exchange further believes the 10,000 contract minimum is reasonable, equitable, and not unfairly discriminatory because tiers are not novel and are applicable for different participants. For example, Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options will be 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"). The Electronic Firm Fee Discount will apply per member organization when such members are trading in their own

¹³ A transaction resulting from an order that was electronically delivered utilizes Phlx XL. See Exchange Rules 1014 and 1080. Electronically delivered orders do not include orders transacted on the Exchange floor. A transaction resulting from an order that is non-electronically-delivered is represented on the trading floor by a floor broker. See Exchange Rule 1063. All orders will be either electronically or non-electronically delivered.

¹⁴ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

¹⁵ 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.

proprietary account. The Exchange believes the proposed Minimum ADV is a reasonable and achievable standard for all members classified as Broker-Dealer, whereas a similar threshold was not needed for Firm because of the competitive environment in which the Exchange operates.

The Exchange is waiving the Cabinet Options Transactions Charges for BD-Customer Facilitations because Cabinet Options Transactions Charges are also waived under the existing waiver applicable to Firm facilitations, in those cases where Cabinet Options Transactions Charges apply in lieu of the Floor Options Transaction Charges. The Exchange believes that waiving the Broker-Dealer FLEX Transaction Fee for transactions in which a member facilitates a Customer order, provided it meets the Minimum ADV, is reasonable because it will encourage the member to facilitate Customer orders. Customer order flow brings liquidity to the Exchange. The Exchange believes that waiving the Broker-Dealer FLEX Transaction Fee for transactions in which a member facilitates a Customer order, provided it meets the Minimum ADV, is equitable and not unfairly discriminatory because Customers are not assessed a FLEX Transaction Fee. All other market participants are assessed a \$0.15 per contract FLEX Transaction Fee. Today, the Firm FLEX Transaction Fee is waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. The Exchange proposes to waive the Broker-Dealer FLEX Transaction Fee as well for BD-Customer Facilitations, if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds the Minimum ADV. This same treatment applies today to pricing applicable to Firm Floor Options Transaction Charges for members executing facilitation

orders when such members are trading in their own proprietary account. The Exchange believes that offering Broker-Dealers the waiver of the FLEX Transaction Fee for facilitating a Customer order, provided it meets the Minimum ADV, is would provide these market participants, who also facilitate Customer orders and perform essentially the same business as a Firm in terms of facilitation orders, the opportunity to obtain the same waiver. The purpose of the waiver is to encourage the member to facilitate Customer orders and other market participants that are assessed a FLEX Transaction Fee, such as Professionals, Specialists and Market Makers, to engage in such activity.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because the proposed fee waivers would be available to any member with BD-Customer Facilitation Trades meeting the Minimum ADV, and because they will incentivize members to execute more such orders on the Exchange. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct Customer 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 described in the above 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 Customer 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,¹⁶ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

Not applicable.

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.
2. Applicable portion of the Exchange's Pricing Schedule.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2013-92)

September ____, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Pricing Schedule Sections II and IV

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 September 3, 2013, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the its Pricing Schedule by waiving the Broker-Dealer Floor Options Transaction Charge (including the Cabinet Options Transaction Charge) as well as the Broker-Dealer FLEX transaction fee, for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur these charges or this fee for trading in their own proprietary account contra to a Customer (a “BD-Customer Facilitation”) if the member’s BD-Customer Facilitation

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.

The text of the proposed rule change is attached as Exhibit 5.

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 the proposed rule change is to amend the Exchange's Pricing Schedule with respect to certain pricing in Section II entitled "Multiply Listed Options Fees," and in Section IV.B, entitled FLEX Transaction Fees, in the case of BD-Customer Facilitations as described below.

Broker-Dealer Floor Options Transaction Charges³

The Exchange currently assesses Broker-Dealer Floor Options Transaction Charges⁴ of \$0.25 per contract for both Penny Pilot and non-Penny Pilot options.

³ The Broker-Dealer Floor Options Transaction Charge and Firm Floor Options Transaction Charge in this discussion include the Cabinet Options Transaction Charge.

⁴ The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

Similarly, the Exchange assesses Firm Floor Options Transaction Charges⁵ of \$0.25 per contract for both Penny Pilot and non-Penny Pilot options, but it waives these charges for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account.⁶ The Exchange is now proposing to also waive the Broker-Dealer Floor Options Transaction Charge for members executing BD-Customer Facilitations if the member's BD-Customer Facilitation average daily volume exceeds 10,000 contracts per day (the "Minimum ADV") in a given month (including both FLEX and non-FLEX transactions) when such members are trading in their own proprietary account.

On occasion, a Broker-Dealer will facilitate orders on behalf of its Customers.⁷ The Broker-Dealer places both the Customer order and the Broker-Dealer's order with a floor broker for execution in open outcry. The Exchange believes that a transaction in which a Broker-Dealer facilitates a Customer order should be treated in the same manner as a Firm facilitation transaction. To qualify for the free execution, the Broker-Dealer and the Customer must have the same Phlx house account number on both the buy and

⁵ The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC. The waiver does not apply to orders where a member is acting as agent on behalf of a non-member.

⁶ See Exchange Rule 1064 entitled "Crossing, Facilitation and Solicited Orders." A facilitation occurs when a floor broker holds an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. The Exchange's waiver of the Firm Floor Options Transaction Charges includes Cabinet Option Transaction Charges.

⁷ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).

sell side of the transaction. This is the same treatment that applies to pricing applicable to Firm Floor Options Transaction Charges for members executing facilitation orders when such members are trading in their own proprietary account.⁸

FLEX Transaction Fees

The Exchange currently assesses Firm FLEX Transaction Fees of \$0.15 per contract as well as Broker-Dealer FLEX Transaction Fees, also \$0.15 per contract, for FLEX transactions in multiply listed options. The Exchange waives the Firm FLEX Transaction Fee for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. The Exchange is now proposing to waive the Broker-Dealer FLEX Transaction Fee as well for BD-Customer Facilitations, if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds the Minimum ADV.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that not charging a member the Broker-Dealer Floor Options Transaction Charge for transactions in which it facilitates a Customer order,

⁸ As noted above, Firm Floor Options Transaction Charges are waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

provided it meets the Minimum ADV, is reasonable because it will encourage the member to facilitate Customer orders and increase participation in open outcry, which will in turn promote liquidity on the Exchange. Customer order flow brings unique benefits to the market which benefits all market participants through increased liquidity. In addition, the proposed rule change is reasonable, equitable, and not unfairly discriminatory because Broker-Dealers facilitating Customer orders are performing essentially the same business as Firm facilitation orders.

The Exchange believes that not charging a member the Broker-Dealer Floor Options Transaction Charge for transactions in which it facilitates a Customer order, provided it meets the Minimum ADV, is equitable and not unfairly discriminatory because Broker-Dealers will continue to be assessed a higher fee than a Customer who pays no fee to transact Floor Penny Pilot or Non-Penny Pilot Options. Broker-Dealers will continue to be assessed higher fees than Specialists and Market Makers in Floor Penny Pilot Options and Non-Penny Pilot Options¹¹ because Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants. They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between Customers, Specialists and Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants, as well as the differing mix of orders entered.

¹¹ Specialists and Market Makers are assessed Floor Penny Pilot and Non-Penny Pilot Options Transaction Charges of \$ 0.25 per contract.

Broker-Dealers, Firms and Professionals¹² today all pay a \$0.25 per contract Floor Penny Pilot and Non-Penny Pilot Options Transaction Charge. Professionals have access to more information and technological advantages as compared to Customers and Professionals do not bear the obligations of Specialists or Market Makers. Also, Professionals engage in trading activity similar to that conducted by Specialists or Market Makers. For example, Professionals continue to join bids and offers on the Exchange and thus compete for incoming order flow. For these reasons, the Exchange assesses Professionals the same Floor Options Transaction Charges as Firms and Broker-Dealers. Today, the Firm Floor Options Transaction Charge of \$0.25 per contract for both Penny Pilot and Non-Penny Pilot options, is waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. The Exchange proposes to waive the Broker-Dealer Floor Options Transaction Charge of \$0.25 per contract for both Penny Pilot and Non-Penny Pilot options for transactions in which it facilitates a Customer order, provided it meets the Minimum ADV. The Exchange believes this proposal narrows the current rate differentials between a Broker-Dealer and a Firm, where a Firm is entitled to a waiver today because the Exchange would waive the Broker-Dealer Floor Options Transaction Charge for members executing BD-Customer Facilitations if the member's BD-Customer Facilitation average daily volume exceeds 10,000 contracts per day in a given month. Offering Broker-Dealers and Firms such a waiver while not offering the waiver to Professionals is not unfairly discriminatory because unlike Firms and Broker-Dealers,

¹² 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).

Professionals do not facilitate orders as described in this proposal.

The Exchange believes that waiving the Broker-Dealer Floor Options Transaction Charge for members executing BD-Customer Facilitations if the member's BD-Customer Facilitation average daily volume exceeds 10,000 contracts per day in a given month as compared to the electronic Options Transaction Charges in both Penny Pilot and Non-Penny Pilot options is reasonable, equitable and not unfairly discriminatory because these fees recognize the distinction between the floor order entry model and the electronic model and the proposed fees respond to competition along the same lines.¹³ Floor participants incur costs associated with accessing the floor, i.e. need for a floor broker, and other costs which are not born by electronic members. Today, the Exchange assesses different fees for electronic as compared to floor transactions for Professionals, Specialists¹⁴ and Market Makers¹⁵, Broker-Dealers and Firms in Section II of the Pricing Schedule.

The Exchange further believes the 10,000 contract minimum is reasonable, equitable, and not unfairly discriminatory because tiers are not novel and are applicable for different participants. For example, Firm electronic Options Transaction Charges in

¹³ A transaction resulting from an order that was electronically delivered utilizes Phlx XL. See Exchange Rules 1014 and 1080. Electronically delivered orders do not include orders transacted on the Exchange floor. A transaction resulting from an order that is non-electronically-delivered is represented on the trading floor by a floor broker. See Exchange Rule 1063. All orders will be either electronically or non-electronically delivered.

¹⁴ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

¹⁵ 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.

Penny Pilot and non-Penny Pilot Options will be 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"). The Electronic Firm Fee Discount will apply per member organization when such members are trading in their own proprietary account. The Exchange believes the proposed Minimum ADV is a reasonable and achievable standard for all members classified as Broker-Dealer, whereas a similar threshold was not needed for Firm because of the competitive environment in which the Exchange operates.

The Exchange is waiving the Cabinet Options Transactions Charges for BD-Customer Facilitations because Cabinet Options Transactions Charges are also waived under the existing waiver applicable to Firm facilitations, in those cases where Cabinet Options Transactions Charges apply in lieu of the Floor Options Transaction Charges. The Exchange believes that waiving the Broker-Dealer FLEX Transaction Fee for transactions in which a member facilitates a Customer order, provided it meets the Minimum ADV, is reasonable because it will encourage the member to facilitate Customer orders. Customer order flow brings liquidity to the Exchange. The Exchange believes that waiving the Broker-Dealer FLEX Transaction Fee for transactions in which a member facilitates a Customer order, provided it meets the Minimum ADV, is equitable and not unfairly discriminatory because Customers are not assessed a FLEX Transaction Fee. All other market participants are assessed a \$0.15 per contract FLEX Transaction Fee. Today, the Firm FLEX Transaction Fee is waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. The Exchange proposes to waive the Broker-Dealer

FLEX Transaction Fee as well for BD-Customer Facilitations, if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds the Minimum ADV. This same treatment applies today to pricing applicable to Firm Floor Options Transaction Charges for members executing facilitation orders when such members are trading in their own proprietary account. The Exchange believes that offering Broker-Dealers the waiver of the FLEX Transaction Fee for facilitating a Customer order, provided it meets the Minimum ADV, is would provide these market participants, who also facilitate Customer orders and perform essentially the same business as a Firm in terms of facilitation orders, the opportunity to obtain the same waiver. The purpose of the waiver is to encourage the member to facilitate Customer orders and other market participants that are assessed a FLEX Transaction Fee, such as Professionals, Specialists and Market Makers, to engage in such activity.

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, because the proposed fee waivers would be available to any member with BD-Customer Facilitation Trades meeting the Minimum ADV, and because they will incentivize members to execute more such orders on the Exchange. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct Customer 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 described in the above 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 Customer orders to the Exchange rather than competing venues.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁶

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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:

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2013-92 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-2013-92. 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-2013-92 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.¹⁷

Kevin M O'Neill
Deputy Secretary

¹⁷ 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.

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

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II. Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed⁹)

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- The Firm Floor Options Transaction Charges will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (“BD-Customer Facilitation”), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.

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IV. Other Transaction Fees

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B. FLEX Transaction Fees

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- The FLEX transaction fees for a Firm will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. In addition, FLEX transaction fees for a Broker-Dealer will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (“BD-Customer Facilitation”), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.

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