

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ PHLX LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

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

Description

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

Amend Options Regulatory Fee.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Angela Last Name * Saccomandi Dunn

Title * Principal Associate General Counsel

E-mail * angela.dunn@nasdaq.com

Telephone * (215) 496-5692 Fax

Signature

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

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

(Title *)

Date 07/03/2017

By Edward S. Knight

Executive Vice President and General Counsel

edward.knight@nasdaq.com

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

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 the Proposed Rule Change

(a) NASDAQ PHLX LLC (“Exchange” or “Phlx”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“Commission”) a proposal to revise Section IV, Part D of the Pricing Schedule to more closely reflect the manner in which Phlx assesses and collects its Options Regulatory Fee (“ORF”).

A notice of the proposed rule change for publication in the Federal Register is at Exhibit 1. The text of the proposed rule change is at 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 (the “Board”) on August 15, 2016. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Angela Saccomandi Dunn
Principal Associate General Counsel
Nasdaq, Inc.
215-496-5692

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 initially filed to establish its ORF in 2009.³ At that time, Phlx filed a rule change similar to that filed by the Chicago Board Options Exchange, Incorporated (“CBOE”). The Exchange has amended its ORF several times since the inception of this fee.⁴ At this time, the Exchange proposes to revise Section IV, Part D of the Pricing Schedule to more closely reflect the manner in which Phlx assesses and collects its Options Regulatory Fee (“ORF”).

The Exchange supports a common approach for the assessment and collection of ORF among the various options exchanges that assess such a fee. Furthermore, the Exchange supports guidance from the Commission regarding regulatory cost structures to ensure equal knowledge and treatment among options markets assessing ORF.

The Exchange assesses an ORF of \$0.0045 per contract side. This proposed rule change does not seek to amend the amount of the ORF. Currently, Phlx assesses its ORF for each Customer option transaction that is either: (1) executed by a member on Phlx; or

³ See Securities Exchange Act Release No. 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR-Phlx-2009-100) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Options Regulatory Fee).

⁴ See Securities Exchange Act Release Nos. 61529 (February 17, 2010), 75 FR 8421 (February 24, 2010) (SR-Phlx-2010-17); 62619 (July 30, 2010), 75 FR 47874 (August 9, 2010) (SR-Phlx-2010-100); 63436 (December 6, 2010), 75 FR 77021 (December 10, 2010) (SR-Phlx-2010-166); 65897 (December 6, 2011), 76 FR 77277 (December 12, 2011) (SR-Phlx-2011-163); 66664 (March 27, 2012), 77 FR 19743 (April 2, 2012) (SR-Phlx-2012-36); 71569 (February 19, 2014), 79 FR 10593 (February 25, 2014) (SR-Phlx-2014-12); 75749 (August 21, 2015), 80 FR 52073 (August 27, 2017) (SR-Phlx-2015-71); 77032 (February 2, 2016), 81 FR 6560 (February 8, 2016) (SR-Phlx-2016-04); and 79751 (January 6, 2017), 82 FR 3826 (January 12, 2017) (SR-Phlx-2017-02).

(2) cleared by a Phlx member or member organization at The Options Clearing Corporation (“OCC”) in the Customer range,⁵ even if the transaction was executed by a non-member of Phlx, regardless of the exchange on which the transaction occurs. To be clear, the options transaction must clear in the Customer account of the member's or member organization's clearing firm at OCC to be considered cleared by a Phlx member or member organization. If the OCC clearing member is a Phlx member or member organization, ORF is assessed and collected on all cleared Customer contracts (after adjustment for CMTA⁶); and (2) if the OCC clearing member or member organization is not a Phlx member, ORF is collected only on the cleared Customer contracts executed at Phlx, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

By way of example, if Broker A, a Phlx member, routes a customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by Phlx from Broker A's clearing account at OCC via

⁵ Exchange Rules require each member to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the Rules of the Exchange and report resulting transactions to OCC. See Exchange Rule 1063, Responsibilities of Floor Brokers, and Options Floor Procedure Advice F-4, Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

⁶ CMTA or Clearing Member Trade Assignment is a form of “give-up” whereby the position will be assigned to a specific clearing firm at OCC. Phlx Rule 1052 provides that every Clearing Member is responsible for the clearance of the Exchange options transactions of such Clearing Member and of each member or member organization who gives up the name of such Clearing Member in an Exchange options transaction, provided the Clearing Member has authorized such member or member organization to give up its name with respect to Exchange options transactions.

direct debit. While this transaction was executed on a market other than Phlx, it was cleared by a Phlx member in the member's OCC clearing account in the Customer range, therefore there is a regulatory nexus between Phlx and the transaction. If Broker A was not a Phlx member, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on Phlx nor was it cleared by a Phlx member.

In the case where one member both executes a transaction and clears the transaction, the ORF is assessed to and collected from the member only once on the execution. In the case where one member executes a transaction and a different member clears the transaction, the ORF is assessed to and collected from the member who clears the transaction and not the member who executes the transaction. In the case where a non-member executes a transaction at an away market and a member clears the transaction, the ORF is assessed to and collected from the member who clears the transaction.⁷ In the case where a member executes a transaction on Phlx and a non-member clears the transaction, the ORF is assessed to the member that executed the transaction and collected from the non-member who cleared the transaction. In the case where a member executes a transaction at an away market and a non-member clears the transaction, the ORF is not assessed to the member who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further,

⁷ The ORF is not charged for member proprietary options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

the data does not allow the Exchange to identify the member executing the trade at an away market.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. For example, a cost related to PSX, the Exchange's equity platform, would not be considered an expense that is compared to ORF revenue. An options surveillance employee's cost, however would be an expense that is compared to ORF revenue. The Exchange notes that fines collected by the Exchange in connection with a disciplinary manner or in connection with Rules 60 or 970⁸ offset ORF.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory

⁸ The Exchange collects fines pursuant to both Rule 60, entitled "Sanctions for Breach of Regulations" and Rule 970, entitled "Floor Procedure Advices: Violations, Penalties, and Procedures."

revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

Finally, the Exchange notes that it is amending its rule text at Section IV, Part D to remove outdated rule text and include rule text to make clear the manner in which ORF is assessed and collected on Phlx.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act¹⁰ 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 its facility and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that modifying the manner in which Phlx assesses and collects ORF provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facility because it is objectively allocated to members in that it is charged to all members on all their transactions that clear as Customer at OCC.

The ORF is not charged on member proprietary options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to Customer transactions. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those members that require more Exchange regulatory services based on

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

the amount of Customer options business they conduct.

Regulating Customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-Customer trading activity. Surveillance, regulation and examination of non-Customer trading activity generally tends to be more automated and less labor intensive. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are anticipated to be typically higher than the costs associated with administering the non-Customer component of its regulatory program. The Exchange proposes assessing higher fees to those members that will require more Exchange regulatory services based on the amount of Customer options business they conduct.¹¹ Additionally, the dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The Exchange has in place a regulatory structure to surveil, conduct examinations and monitor the marketplace for violations of Exchange Rules. The ORF assists the Exchange to fund the cost of this regulation of the marketplace.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The ORF is not intended to have any impact on competition. Rather, it is designed to enable the Exchange to recover a material portion of the Exchange's cost related to its

¹¹ The ORF is not charged for orders that clear in categories other than the Customer range at OCC (e.g., Market Maker orders) because members incur the costs of memberships and through their memberships are charged transaction fees, dues and other fees that go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

regulatory activities. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Phlx ORF is comparable to fee assessed by other options exchanges for the same or similar services.

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,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.

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.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

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

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2017-54)

July __, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Options Regulatory 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 3, 2017, NASDAQ 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 revise Section IV, Part D of the Pricing Schedule to more closely reflect the manner in which Phlx assesses and collects its Options Regulatory Fee (“ORF”).

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqphlx.cchwallstreet.com/>, 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 initially filed to establish its ORF in 2009.³ At that time, Phlx filed a rule change similar to that filed by the Chicago Board Options Exchange, Incorporated ("CBOE"). The Exchange has amended its ORF several times since the inception of this fee.⁴ At this time, the Exchange proposes to revise Section IV, Part D of the Pricing Schedule to more closely reflect the manner in which Phlx assesses and collects its Options Regulatory Fee ("ORF").

³ See Securities Exchange Act Release No. 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR-Phlx-2009-100) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Options Regulatory Fee).

⁴ See Securities Exchange Act Release Nos. 61529 (February 17, 2010), 75 FR 8421 (February 24, 2010) (SR-Phlx-2010-17); 62619 (July 30, 2010), 75 FR 47874 (August 9, 2010) (SR-Phlx-2010-100); 63436 (December 6, 2010), 75 FR 77021 (December 10, 2010) (SR-Phlx-2010-166); 65897 (December 6, 2011), 76 FR 77277 (December 12, 2011) (SR-Phlx-2011-163); 66664 (March 27, 2012), 77 FR 19743 (April 2, 2012) (SR-Phlx-2012-36); 71569 (February 19, 2014), 79 FR 10593 (February 25, 2014) (SR-Phlx-2014-12); 75749 (August 21, 2015), 80 FR 52073 (August 27, 2015) (SR-Phlx-2015-71); 77032 (February 2, 2016), 81 FR 6560 (February 8, 2016) (SR-Phlx-2016-04); and 79751 (January 6, 2017), 82 FR 3826 (January 12, 2017) (SR-Phlx-2017-02).

The Exchange supports a common approach for the assessment and collection of ORF among the various options exchanges that assess such a fee. Furthermore, the Exchange supports guidance from the Commission regarding regulatory cost structures to ensure equal knowledge and treatment among options markets assessing ORF.

The Exchange assesses an ORF of \$0.0045 per contract side. This proposed rule change does not seek to amend the amount of the ORF. Currently, Phlx assesses its ORF for each Customer option transaction that is either: (1) executed by a member on Phlx; or (2) cleared by a Phlx member or member organization at The Options Clearing Corporation (“OCC”) in the Customer range,⁵ even if the transaction was executed by a non-member of Phlx, regardless of the exchange on which the transaction occurs. To be clear, the options transaction must clear in the Customer account of the member's or member organization's clearing firm at OCC to be considered cleared by a Phlx member or member organization. If the OCC clearing member is a Phlx member or member organization, ORF is assessed and collected on all cleared Customer contracts (after adjustment for CMTA⁶); and (2) if the OCC clearing member or member organization is

⁵ Exchange Rules require each member to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the Rules of the Exchange and report resulting transactions to OCC. See Exchange Rule 1063, Responsibilities of Floor Brokers, and Options Floor Procedure Advice F-4, Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

⁶ CMTA or Clearing Member Trade Assignment is a form of “give-up” whereby the position will be assigned to a specific clearing firm at OCC. Phlx Rule 1052 provides that every Clearing Member is responsible for the clearance of the Exchange options transactions of such Clearing Member and of each member or member organization who gives up the name of such Clearing Member in an

not a Phlx member, ORF is collected only on the cleared Customer contracts executed at Phlx, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

By way of example, if Broker A, a Phlx member, routes a customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by Phlx from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than Phlx, it was cleared by a Phlx member in the member's OCC clearing account in the Customer range, therefore there is a regulatory nexus between Phlx and the transaction. If Broker A was not a Phlx member, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on Phlx nor was it cleared by a Phlx member.

In the case where one member both executes a transaction and clears the transaction, the ORF is assessed to and collected from the member only once on the execution. In the case where one member executes a transaction and a different member clears the transaction, the ORF is assessed to and collected from the member who clears the transaction and not the member who executes the transaction. In the case where a non-member executes a transaction at an away market and a member clears the transaction, the ORF is assessed to and collected from the member who clears the transaction.⁷ In the case where a member executes a transaction on Phlx and a non-

Exchange options transaction, provided the Clearing Member has authorized such member or member organization to give up its name with respect to Exchange options transactions.

⁷ The ORF is not charged for member proprietary options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. The dues and fees paid by members go into the general funds of the

member clears the transaction, the ORF is assessed to the member that executed the transaction and collected from the non-member who cleared the transaction. In the case where a member executes a transaction at an away market and a non-member clears the transaction, the ORF is not assessed to the member who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the member executing the trade at an away market.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. For example, a cost related to PSX, the Exchange's equity platform, would not be considered an expense that is compared to ORF revenue. An options surveillance employee's cost, however would be an expense that is compared to ORF revenue. The Exchange notes that fines collected by the Exchange in connection with a disciplinary manner or in connection with Rules 60 or 970⁸ offset ORF.

Exchange, a portion of which is used to help pay the costs of regulation. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

⁸ The Exchange collects fines pursuant to both Rule 60, entitled "Sanctions for Breach of Regulations" and Rule 970, entitled "Floor Procedure Advices: Violations, Penalties, and Procedures."

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

Finally, the Exchange notes that it is amending its rule text at Section IV, Part D to remove outdated rule text and include rule text to make clear the manner in which ORF is assessed and collected on Phlx.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act¹⁰ 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 its facility and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that modifying the manner in which Phlx assesses and collects

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

ORF provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facility because it is objectively allocated to members in that it is charged to all members on all their transactions that clear as Customer at OCC.

The ORF is not charged on member proprietary options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to Customer transactions. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those members that require more Exchange regulatory services based on the amount of Customer options business they conduct.

Regulating Customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-Customer trading activity. Surveillance, regulation and examination of non-Customer trading activity generally tends to be more automated and less labor intensive. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are anticipated to be typically higher than the costs associated with administering the non-Customer component of its regulatory program. The Exchange proposes assessing higher fees to those members that will require more Exchange regulatory services based on the amount of Customer options business they conduct.¹¹

Additionally, the dues and fees paid by members go into the general funds of the

¹¹ The ORF is not charged for orders that clear in categories other than the Customer range at OCC (e.g., Market Maker orders) because members incur the costs of memberships and through their memberships are charged transaction fees, dues and other fees that go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

Exchange, a portion of which is used to help pay the costs of regulation. The Exchange has in place a regulatory structure to surveil, conduct examinations and monitor the marketplace for violations of Exchange Rules. The ORF assists the Exchange to fund the cost of this regulation of the marketplace.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The ORF is not intended to have any impact on competition. Rather, it is designed to enable the Exchange to recover a material portion of the Exchange's cost related to its regulatory activities. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Phlx ORF is comparable to fee assessed by other options exchanges for the same or similar services.

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.¹²

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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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:

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-2017-54 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2017-54. 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-2017-54 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.¹³

Eduardo A. Aleman
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined and deleted text is in brackets.

**NASDAQ PHLX LLC PRICING SCHEDULE
THE EXCHANGE CALCULATES FEES ON A TRADE DATE BASIS.**

POLICY FOR AMENDING BILLING INFORMATION: CORRECTIONS SUBMITTED AFTER TRADE DATE AND PRIOR TO THE ISSUANCE OF AN INVOICE BY THE EXCHANGE MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ONLY MEMBERS MAY SUBMIT TRADE CORRECTIONS.

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 PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. THE EXCHANGE CALCULATES FEES ON A TRADE DATE BASIS. ONLY MEMBERS MAY SUBMIT BILLING DISPUTES.

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IV. Other Transaction Fees

A. – C. No change.

**D. Options Regulatory Fee
[\$0.0034]**

\$0.0045 [as of February 1, 2017]

The Options Regulatory Fee “ORF” is [will be] assessed by the Exchange to [on] each Phlx member for [all] options transactions [executed or cleared by the member that are] cleared by The Options Clearing Corporation (“OCC”) in the customer range where: (1) the execution occurs on the Exchange or (2) the execution occurs on another exchange and is cleared by an Exchange member. [regardless of the exchange on which the transaction occurs. The fee is collected indirectly from members through their clearing firms by OCC on behalf of PHLX.] The ORF is collected by OCC on behalf of the Exchange from (1) Exchange clearing members for all customer transactions they clear or (2) non-members for all customer transactions they clear that were executed on the Exchange. The Exchange uses reports from OCC when assessing and collecting ORF. The Exchange will notify members via an Options Trader Alert of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change.

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