

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required)

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 (required)

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 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

Add Remove View

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

Add Remove View

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

Add Remove View

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 its Routing Fees to adopt new fees which recoup costs incurred by the Exchange when routing to various away markets. The Exchange also proposes to amend Section VII, Section D to memorialize a fee currently assessed to members in its Pricing Schedule.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on November 1, 2012.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of applicable portion of the 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 10, 2012. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Questions and comments on the proposed rule change may be directed to Angela Saccomandi Dunn, Associate General Counsel, at (215) 496-5692.

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

a. Purpose

The purpose of this filing is to eliminate the current Routing Fees in Section V of the Pricing Schedule and adopt new Routing Fees which recoup costs that the Exchange incurs for routing and executing orders in equity options to various away markets.

The Exchange's Pricing Schedule at Section V currently includes the following Routing Fees for routing Customer, Professional,³ Firm, Broker-Dealer, Market Maker⁴ and Specialist⁵ orders to away markets:

Exchange	Customer	Professional	Firm/Broker-Dealer/Specialist/Market Maker
NYSE AMEX	\$0.11	\$0.31	\$0.55
BATS Penny	\$0.55	\$0.55	\$0.55
BATS non-Penny	\$0.86	\$0.91	\$0.91
BOX	\$0.11	\$0.11	\$0.55
BX Options	\$0.11	\$0.54	\$0.54

³ 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).

⁴ A "Market Maker" includes Registered Options Traders ("ROTs") (Rule 1014(b)(i) and (ii), which include Streaming Quote Traders ("SQTs") (See Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders ("RSQTs") (See Rule 1014(b)(ii)(B)).

⁵ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

CBOE	\$0.11	\$0.31	\$0.55
CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs and HOLDRs	\$0.29	\$0.31	\$0.55
C2	\$0.55	\$0.56	\$0.55
ISE	\$0.11	\$0.29	\$0.55
ISE Select Symbols ¹³	\$0.31	\$0.39	\$0.55
NYSE ARCA (Penny Pilot)	\$0.55	\$0.55	\$0.55
NYSE ARCA (Standard)	\$0.11	\$0.11	\$0.55
NOM Penny Pilot Options	\$0.54	\$0.54	\$0.55
NOM Non-Penny Pilot Options	\$0.86	\$0.91	\$0.91

¹³These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

The Exchange proposes to adopt new Routing Fees when routing and executing orders in equity options to BATS Exchange, Inc. (“BATS”), BOX Options Exchange LLC (“BOX”), NASDAQ OMX BX, Inc. (“BX Options”), C2 Options Exchange, Incorporated (“C2”), Chicago Board Options Exchange, Incorporated (“CBOE”),

International Securities Exchange, LLC (“ISE”), NASDAQ Options Market (“NOM”), NYSE Amex LLC (“NYSE Amex”) and NYSE Arca, Inc. (“NYSE Arca”).

Today, the Exchange calculates Routing Fees by assessing certain Exchange costs related to routing orders to away markets plus the away market’s transaction fee. The Exchange incurs a fee when it utilizes Nasdaq Options Services LLC (“NOS”), a member of the Exchange and the Exchange’s exclusive order router.⁶ NOS is utilized by the Exchange’s fully automated options trading system, PHLX XL[®],⁷ to route orders in options listed and open for trading on the PHLX XL system to destination markets. Each time NOS routes to away markets NOS incurs approximately \$0.06 per contract in clearing-related cost and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at away markets, and technical costs associated with routing options. Today, the Exchange’s Routing Fees include a \$0.06 clearing-related cost and another \$0.05 per contract fee associated with administrative and technical costs for operating NOS (\$0.11

⁶ In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC (“NOS”), a member of the Exchange, as the Exchange’s exclusive order router. See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

⁷ This proposal refers to “PHLX XL” as the Exchange’s automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as “Phlx XL II.” See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from “Phlx XL II” to “PHLX XL” for branding purposes.

per contract in total) in addition to the away market's transaction fee. The Exchange does not assess actual transaction fees in all cases today, but rather has limited fees in certain circumstances. In those cases the Exchange does not recover all of its costs for routing to the away market. Each time an away market modifies its transaction fees the Exchange files a proposed rule change to amend its Routing Fees to reflect a Routing Fee which equates to the current away market's transaction fee plus an additional \$0.11 per contract for costs incurred by the Exchange.⁸

The Exchange proposes to amend its Routing Fees to specify in its rule text that the Exchange will assess the transaction fee that is being assessed by the away market plus a specified fixed fee which represents a cost incurred by the Exchange for routing an order to a destination market. The transaction fee would be the actual charge assessed by the away exchange at the time that the order was entered into the Exchange's trading system. This transaction fee would be calculated on an order-by-order basis since different away markets charge different amounts.⁹ The Exchange would also assess a fixed fee that represents the cost to the Exchange for routing the order to the away market. In analyzing its costs, the Exchange took into account clearing costs,¹⁰ administrative and technical costs associated with operating NOS, membership fees at

⁸ In some cases the Exchange filed a rule change which noted that the Exchange would not assess the actual transaction charge, but a lower amount where the transaction fees at an away market were higher than other markets. All Routing Fees are available on the Exchange's Pricing Schedule at Section V.

⁹ This is similar to the methodology utilized by ISE in assessing Routing Fees. See ISE's Fee Schedule.

¹⁰ The Options Clearing Corporation ("OCC") recently amended its clearing fee from \$0.03 per contract side to \$0.01 per contract side. See Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR-OCC-2012-18).

away markets and regulatory costs. With respect to BATS, BOX, C2, CBOE, ISE, NYSE Amex and NYSE Arca the Exchange proposes to assess a \$0.10 per contract fee in addition to the away market's transaction fee.¹¹ The Exchange currently assesses \$0.11 per contract for costs incurred by the Exchange. This proposal would reduce those fixed costs to \$0.10 per contract. While the clearing cost itself was lowered by OCC, the Exchange, in analyzing its actual costs, has determined to assess a \$0.10 per contract fixed fee to represent the overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, which is in addition to the transaction fee assessed by the away market.¹²

The Exchange also analyzed costs related to routing to BX Options and NOM and determined the costs are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.¹³ Because Phlx, BX Options and NOM all utilize NOS, the cost to the Exchange is less as compared to routing to other away markets. In addition the fixed costs are reduced because NOS is owned and operated by NASDAQ OMX and the three exchanges and NOS share common technology and related operational functions. The Exchange proposes to assess a \$0.04 per contract fixed fee in addition to the away market's transaction fee to route to BX Options and NOM. This

¹¹ The \$0.10 per contract fixed fee would apply to all options exchanges other than BX Options and NOM, which are discussed separately in this proposal. The Exchange anticipates that if other options exchanges are approved by the Commission after the filing of this proposal, those exchanges would be assessed the \$0.10 per contract fee applicable to "all other options exchanges."

¹² The Exchange will assess the actual transaction fees that are in place at the various away markets and will no longer limit those transaction fees as it does today in certain circumstances.

¹³ See Chapter VI, Section 11 of the BX Options and NOM Rules.

proposal would reduce the fixed fees assessed today on average to route to BX Options and NOM from \$0.11 to \$0.04 per contract.

For all Routing Fees, the transaction fee is based on the away market's transaction fee or rebate for particular market participants and in the case that there is no transaction fee or rebate assessed by the away market, the only fee assessed would be the \$0.04 or \$0.10 per contract fixed fee assessed by the Exchange to recoup its costs. As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

Finally, the Exchange notes in the proposed rule text in the Pricing Schedule that the fee assessed for routing shall be the actual transaction fee assessed *or rebate* paid by the away market. The Exchange is proposing to pay a market participant a rebate offered by an away market where there is such a rebate. Any rebate available would be netted against a fee assessed by the Exchange. For example, if a Customer order is routed to BOX, and BOX offers a customer rebate of \$0.20 per contract, the Exchange would assess a \$0.10 per contract fixed fee which would net against the rebate (\$0.20 per contract in this example). The market participant for whom the customer contract was routed would receive a \$0.10 per contract rebate. Today the market participant does not receive a rebate and only pays the current \$0.11 per contract Routing Fee.

The Exchange is also proposing to memorialize a fee that is currently assessed on members and included in Exchange Rule 1092 titled "Obvious Error and Catastrophic Errors." Rule 1092(f)(ii) states that [a]n Options Exchange Official¹⁴ will determine whether a transaction(s) qualifies as a Catastrophic Error. If it is determined that a

¹⁴ An Option Exchange Official is an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer.

Catastrophic Error has occurred, the Options Exchange Official will adjust the execution price(s) of the transaction(s) according to Rule 1092. If it is determined that a Catastrophic Error has not occurred, the member requesting the determination will be subject to a charge of \$5,000. The Exchange has memorialized its fees within the Pricing Schedule in order that all fees are readily located in one document. The Exchange is proposing to memorialize the Catastrophic Fee pursuant to Rule 1092 in Chapter VII, Part D of the Pricing Schedule for ease of reference.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁶ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders to away markets on behalf of members. Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, and technical costs associated with routing options. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets in addition to

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

transaction fees assessed to market participants for the execution of Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders by the away market.

In addition, the Exchange notes that while it currently assesses a fixed fee of \$0.11 per contract for costs incurred by the Exchange, the proposal would reduce the fixed fee to \$0.10 per contract for non-NASDAQ OMX exchanges. The Exchange believes that the proposed fee is reasonable because while the per contract clearing fee itself was lowered by OCC (from \$0.03 to \$0.01 per contract side), the Exchange, in analyzing its actual costs, has determined to assess a \$0.10 per contract fee to represent the overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, in addition to the transaction fee assessed by the away market. The clearing cost was only one component of the \$0.11 per contract fee and other costs, which comprise the proposed \$0.10 per contract fee, are not recouped today. Also, the Exchange will assess the actual transaction fees that are in place at the various away markets and will no longer limit those transaction fees as it does today in certain circumstances. The Exchange believes that it is reasonable for it to recoup its actual costs associated with routing orders to away markets. Also, market participants whose orders routed to away markets would be entitled to receive rebates offered by away markets, which rebates would net against fees assessed by the Exchange for routing orders. The Exchange believes that the opportunity to collect a rebate, which is not the case today, will reduce Routing Fees.

In addition, the Exchange believes that it is equitable and not unfairly discriminatory to assess a fixed cost of \$0.10 per contract, which is mostly comprised of

technology, infrastructure and away market non-transaction fee costs, to route orders to non-NASDAQ OMX away markets because the Exchange would be assessing an overall lower fixed fee. While today, the \$0.11 per contract fee is mostly comprised of clearing costs, the proposed \$0.10 per contract fixed fee is based on costs attributable to routing to non-NASDAQ OMX away markets, which costs are not assessed today. The proposed \$0.10 per contract fixed fee would be assessed uniformly on all orders routed to non-NASDAQ OMX markets in addition to the actual away market transaction fee assessed by the destination market.

The Exchange believes that it is equitable and not unfairly discriminatory to assess a fixed cost of \$0.04 per contract to route orders to NASDAQ OMX away markets (BX Options and NOM) because the cost, in terms of actual cash outlays, to the Exchange to route to those markets is lower. For example, costs related to routing to BX Options and NOM are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.¹⁷ NOS and the three NASDAQ OMX options markets have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs when routing orders. The proposed fixed fee for routing orders to non-NASDAQ OMX

¹⁷ See Chapter VI, Section 11 of the BX Options and NOM Rules.

exchanges is therefore increased as compared to the fees for routing orders to NASDAQ OMX exchanges (BX Options and NOM), \$0.10 per contract versus \$0.04 per contract, respectively. The proposed \$0.04 per contract fixed fee would be assessed uniformly on all orders routed to NASDAQ OMX markets in addition to the actual away market transaction fee assessed by the destination market. The Exchange also believes that it is equitable and not unfairly discriminatory for market participants to receive rebates on orders routed to away markets that pay rebates. Today, the Exchange does not pay such rebates when routing orders. The Exchange would pay rebates offered by away markets uniformly to market participants when their orders are routed to a destination market that offers a rebate.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to BX Options and NOM.¹⁸ It is important to note with respect to routing to an away market that orders are routed to away markets based on price first. PHLX XL will route orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) ("NBBO") price.¹⁹ Market participants may submit orders to the Exchange as ineligible

¹⁸ Today, the Exchange assesses a \$0.11 per contract fixed fee for routing orders to BX Options and NOM. That fee is proposed to be reduced to a \$0.04 per contract fixed fee, which would be in addition to the actual transaction fee assessed by the away market.

¹⁹ See Rule 1080(m). The Phlx XL II system will contemporaneously route an order marked as an Intermarket Sweep Order ("ISO") to each away market disseminating prices better than the Exchange's price, for the lesser of: (a) the disseminated size of such away markets, or (b) the order size and, if order size remains after such routing, trade at the Exchange's disseminated bid or offer up to its disseminated size. If contracts still remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the Phlx XL II

for routing or “DNR” to avoid incurring the Routing Fees proposed herein.²⁰

The Exchange also believes its proposal to add the Catastrophic Error Fee to the Pricing Schedule is reasonable, equitable and not unfairly discriminatory because the Exchange has listed all fees it assesses and rebates paid to its members and member organizations within the Pricing Schedule. The Exchange believes that memorializing all fees and rebates within the Pricing Schedule provides an easy reference for members and member organizations. The Exchange is not establishing a new fee, but rather simply codifying the Catastrophic Error Fee, which is noted in Rule 1092, within the Pricing Schedule.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, Phlx Routing Fees seek to recoup costs for Routing Orders to other exchanges on behalf of its members. Options Participants may choose to mark the order as ineligible for routing to avoid incurring these fees.²¹

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.

system will not route the order to the locking or crossing market center, with some exceptions noted in Rule 1080(m).

²⁰ See Rule 1066(h) (Certain Types of Orders Defined) and 1080(b)(i)(A) (PHLX XL and PHLX XL II).

²¹ Id.

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,²² 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

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

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. Applicable portion of the Exchange's Pricing Schedule.

²² 15 U.S.C. 78s(b)(3)(A)(ii).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2012-129)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Routing Fees

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 October 29, 2012, 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 its Routing Fees to adopt new fees which recoup costs incurred by the Exchange when routing to various away markets. The Exchange also proposes to amend Section VII, Section D to memorialize a fee currently assessed to members in its Pricing Schedule.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on November 1, 2012.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings>, 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 the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this filing is to eliminate the current Routing Fees in Section V of the Pricing Schedule and adopt new Routing Fees which recoup costs that the Exchange incurs for routing and executing orders in equity options to various away markets.

The Exchange's Pricing Schedule at Section V currently includes the following Routing Fees for routing Customer, Professional,³ Firm, Broker-Dealer, Market Maker⁴ and Specialist⁵ orders to away markets:

³ 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).

⁴ A "Market Maker" includes Registered Options Traders ("ROTs") (Rule 1014(b)(i) and (ii), which include Streaming Quote Traders ("SQTs") (See Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders ("RSQTs") (See Rule 1014(b)(ii)(B)).

⁵ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

Exchange	Customer	Professional	Firm/Broker- Dealer/Specialist/Market Maker
NYSE AMEX	\$0.11	\$0.31	\$0.55
BATS Penny	\$0.55	\$0.55	\$0.55
BATS non-Penny	\$0.86	\$0.91	\$0.91
BOX	\$0.11	\$0.11	\$0.55
BX Options	\$0.11	\$0.54	\$0.54
CBOE	\$0.11	\$0.31	\$0.55
CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs and HOLDRs	\$0.29	\$0.31	\$0.55
C2	\$0.55	\$0.56	\$0.55
ISE	\$0.11	\$0.29	\$0.55
ISE Select Symbols ¹³	\$0.31	\$0.39	\$0.55
NYSE ARCA (Penny Pilot)	\$0.55	\$0.55	\$0.55
NYSE ARCA (Standard)	\$0.11	\$0.11	\$0.55
NOM Penny Pilot Options	\$0.54	\$0.54	\$0.55
NOM Non-Penny Pilot Options	\$0.86	\$0.91	\$0.91

¹³These fees are applicable to orders routed to ISE that are subject to

Rebates and Fees for Adding and Removing Liquidity in Select Symbols.
See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

The Exchange proposes to adopt new Routing Fees when routing and executing orders in equity options to BATS Exchange, Inc. ("BATS"), BOX Options Exchange LLC ("BOX"), NASDAQ OMX BX, Inc. ("BX Options"), C2 Options Exchange, Incorporated ("C2"), Chicago Board Options Exchange, Incorporated ("CBOE"), International Securities Exchange, LLC ("ISE"), NASDAQ Options Market ("NOM"), NYSE Amex LLC ("NYSE Amex") and NYSE Arca, Inc. ("NYSE Arca").

Today, the Exchange calculates Routing Fees by assessing certain Exchange costs related to routing orders to away markets plus the away market's transaction fee. The Exchange incurs a fee when it utilizes Nasdaq Options Services LLC ("NOS"), a member of the Exchange and the Exchange's exclusive order router.⁶ NOS is utilized by the Exchange's fully automated options trading system, PHLX XL[®],⁷ to route orders in options listed and open for trading on the PHLX XL system to destination markets. Each time NOS routes to away markets NOS incurs approximately \$0.06 per contract in clearing-related cost and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The

⁶ In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("NOS"), a member of the Exchange, as the Exchange's exclusive order router. See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

⁷ This proposal refers to "PHLX XL" as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL" for branding purposes.

Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at away markets, and technical costs associated with routing options. Today, the Exchange's Routing Fees include a \$0.06 clearing-related cost and another \$0.05 per contract fee associated with administrative and technical costs for operating NOS (\$0.11 per contract in total) in addition to the away market's transaction fee. The Exchange does not assess actual transaction fees in all cases today, but rather has limited fees in certain circumstances. In those cases the Exchange does not recover all of its costs for routing to the away market. Each time an away market modifies its transaction fees the Exchange files a proposed rule change to amend its Routing Fees to reflect a Routing Fee which equates to the current away market's transaction fee plus an additional \$0.11 per contract for costs incurred by the Exchange.⁸

The Exchange proposes to amend its Routing Fees to specify in its rule text that the Exchange will assess the transaction fee that is being assessed by the away market plus a specified fixed fee which represents a cost incurred by the Exchange for routing an order to a destination market. The transaction fee would be the actual charge assessed by the away exchange at the time that the order was entered into the Exchange's trading system. This transaction fee would be calculated on an order-by-order basis since

⁸ In some cases the Exchange filed a rule change which noted that the Exchange would not assess the actual transaction charge, but a lower amount where the transaction fees at an away market were higher than other markets. All Routing Fees are available on the Exchange's Pricing Schedule at Section V.

different away markets charge different amounts.⁹ The Exchange would also assess a fixed fee that represents the cost to the Exchange for routing the order to the away market. In analyzing its costs, the Exchange took into account clearing costs,¹⁰ administrative and technical costs associated with operating NOS, membership fees at away markets and regulatory costs. With respect to BATS, BOX, C2, CBOE, ISE, NYSE Amex and NYSE Arca the Exchange proposes to assess a \$0.10 per contract fee in addition to the away market's transaction fee.¹¹ The Exchange currently assesses \$0.11 per contract for costs incurred by the Exchange. This proposal would reduce those fixed costs to \$0.10 per contract. While the clearing cost itself was lowered by OCC, the Exchange, in analyzing its actual costs, has determined to assess a \$0.10 per contract fixed fee to represent the overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, which is in addition to the transaction fee assessed by the away market.¹²

The Exchange also analyzed costs related to routing to BX Options and NOM and determined the costs are lower as compared to other away markets because NOS is

⁹ This is similar to the methodology utilized by ISE in assessing Routing Fees. See ISE's Fee Schedule.

¹⁰ The Options Clearing Corporation ("OCC") recently amended its clearing fee from \$0.03 per contract side to \$0.01 per contract side. See Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR-OCC-2012-18).

¹¹ The \$0.10 per contract fixed fee would apply to all options exchanges other than BX Options and NOM, which are discussed separately in this proposal. The Exchange anticipates that if other options exchanges are approved by the Commission after the filing of this proposal, those exchanges would be assessed the \$0.10 per contract fee applicable to "all other options exchanges."

¹² The Exchange will assess the actual transaction fees that are in place at the various away markets and will no longer limit those transaction fees as it does today in certain circumstances.

utilized by all three exchanges to route orders.¹³ Because Phlx, BX Options and NOM all utilize NOS, the cost to the Exchange is less as compared to routing to other away markets. In addition the fixed costs are reduced because NOS is owned and operated by NASDAQ OMX and the three exchanges and NOS share common technology and related operational functions. The Exchange proposes to assess a \$0.04 per contract fixed fee in addition to the away market's transaction fee to route to BX Options and NOM. This proposal would reduce the fixed fees assessed today on average to route to BX Options and NOM from \$0.11 to \$0.04 per contract.

For all Routing Fees, the transaction fee is based on the away market's transaction fee or rebate for particular market participants and in the case that there is no transaction fee or rebate assessed by the away market, the only fee assessed would be the \$0.04 or \$0.10 per contract fixed fee assessed by the Exchange to recoup its costs. As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

Finally, the Exchange notes in the proposed rule text in the Pricing Schedule that the fee assessed for routing shall be the actual transaction fee assessed *or rebate* paid by the away market. The Exchange is proposing to pay a market participant a rebate offered by an away market where there is such a rebate. Any rebate available would be netted against a fee assessed by the Exchange. For example, if a Customer order is routed to BOX, and BOX offers a customer rebate of \$0.20 per contract, the Exchange would assess a \$0.10 per contract fixed fee which would net against the rebate (\$0.20 per contract in this example). The market participant for whom the customer contract was

¹³ See Chapter VI, Section 11 of the BX Options and NOM Rules.

routed would receive a \$0.10 per contract rebate. Today the market participant does not receive a rebate and only pays the current \$0.11 per contract Routing Fee.

The Exchange is also proposing to memorialize a fee that is currently assessed on members and included in Exchange Rule 1092 titled “Obvious Error and Catastrophic Errors.” Rule 1092(f)(ii) states that [a]n Options Exchange Official¹⁴ will determine whether a transaction(s) qualifies as a Catastrophic Error. If it is determined that a Catastrophic Error has occurred, the Options Exchange Official will adjust the execution price(s) of the transaction(s) according to Rule 1092. If it is determined that a Catastrophic Error has not occurred, the member requesting the determination will be subject to a charge of \$5,000. The Exchange has memorialized its fees within the Pricing Schedule in order that all fees are readily located in one document. The Exchange is proposing to memorialize the Catastrophic Fee pursuant to Rule 1092 in Chapter VII, Part D of the Pricing Schedule for ease of reference.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁶ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer,

¹⁴ An Option Exchange Official is an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

Professional, Firm, Broker-Dealer, Specialist and Market Maker orders to away markets on behalf of members. Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, and technical costs associated with routing options. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders by the away market.

In addition, the Exchange notes that while it currently assesses a fixed fee of \$0.11 per contract for costs incurred by the Exchange, the proposal would reduce the fixed fee to \$0.10 per contract for non-NASDAQ OMX exchanges. The Exchange believes that the proposed fee is reasonable because while the per contract clearing fee itself was lowered by OCC (from \$0.03 to \$0.01 per contract side), the Exchange, in analyzing its actual costs, has determined to assess a \$0.10 per contract fee to represent the overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, in addition to the transaction fee assessed by the away market. The clearing cost was only one component of the \$0.11 per contract fee and other costs, which comprise the proposed \$0.10 per contract fee, are not recouped today. Also, the Exchange will assess the actual transaction fees that are in place at the various away markets and will no longer limit those transaction fees as it does today in certain circumstances. The Exchange believes that it is reasonable for it to recoup its actual costs

associated with routing orders to away markets. Also, market participants whose orders routed to away markets would be entitled to receive rebates offered by away markets, which rebates would net against fees assessed by the Exchange for routing orders. The Exchange believes that the opportunity to collect a rebate, which is not the case today, will reduce Routing Fees.

In addition, the Exchange believes that it is equitable and not unfairly discriminatory to assess a fixed cost of \$0.10 per contract, which is mostly comprised of technology, infrastructure and away market non-transaction fee costs, to route orders to non-NASDAQ OMX away markets because the Exchange would be assessing an overall lower fixed fee. While today, the \$0.11 per contract fee is mostly comprised of clearing costs, the proposed \$0.10 per contract fixed fee is based on costs attributable to routing to non-NASDAQ OMX away markets, which costs are not assessed today. The proposed \$0.10 per contract fixed fee would be assessed uniformly on all orders routed to non-NASDAQ OMX markets in addition to the actual away market transaction fee assessed by the destination market.

The Exchange believes that it is equitable and not unfairly discriminatory to assess a fixed cost of \$0.04 per contract to route orders to NASDAQ OMX away markets (BX Options and NOM) because the cost, in terms of actual cash outlays, to the Exchange to route to those markets is lower. For example, costs related to routing to BX Options and NOM are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.¹⁷ NOS and the three NASDAQ OMX options markets have a common data center and staff that are responsible for the day-to-day

¹⁷ See Chapter VI, Section 11 of the BX Options and NOM Rules.

operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs when routing orders. The proposed fixed fee for routing orders to non-NASDAQ OMX exchanges is therefore increased as compared to the fees for routing orders to NASDAQ OMX exchanges (BX Options and NOM), \$0.10 per contract versus \$0.04 per contract, respectively. The proposed \$0.04 per contract fixed fee would be assessed uniformly on all orders routed to NASDAQ OMX markets in addition to the actual away market transaction fee assessed by the destination market. The Exchange also believes that it is equitable and not unfairly discriminatory for market participants to receive rebates on orders routed to away markets that pay rebates. Today, the Exchange does not pay such rebates when routing orders. The Exchange would pay rebates offered by away markets uniformly to market participants when their orders are routed to a destination market that offers a rebate.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to BX Options and NOM.¹⁸ It is important to note with respect to routing to an away market that orders are routed to away

¹⁸ Today, the Exchange assesses a \$0.11 per contract fixed fee for routing orders to BX Options and NOM. That fee is proposed to be reduced to a \$0.04 per contract fixed fee, which would be in addition to the actual transaction fee assessed by the away market.

markets based on price first. PHLX XL will route orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) ("NBBO") price.¹⁹ Market participants may submit orders to the Exchange as ineligible for routing or "DNR" to avoid incurring the Routing Fees proposed herein.²⁰

The Exchange also believes its proposal to add the Catastrophic Error Fee to the Pricing Schedule is reasonable, equitable and not unfairly discriminatory because the Exchange has listed all fees it assesses and rebates paid to its members and member organizations within the Pricing Schedule. The Exchange believes that memorializing all fees and rebates within the Pricing Schedule provides an easy reference for members and member organizations. The Exchange is not establishing a new fee, but rather simply codifying the Catastrophic Error Fee, which is noted in Rule 1092, within the Pricing Schedule.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, Phlx Routing Fees seek to recoup costs for Routing Orders to other exchanges on behalf of its members. Options Participants may choose to mark the order

¹⁹ See Rule 1080(m). The Phlx XL II system will contemporaneously route an order marked as an Intermarket Sweep Order ("ISO") to each away market disseminating prices better than the Exchange's price, for the lesser of: (a) the disseminated size of such away markets, or (b) the order size and, if order size remains after such routing, trade at the Exchange's disseminated bid or offer up to its disseminated size. If contracts still remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the Phlx XL II system will not route the order to the locking or crossing market center, with some exceptions noted in Rule 1080(m).

²⁰ See Rule 1066(h) (Certain Types of Orders Defined) and 1080(b)(i)(A) (PHLX XL and PHLX XL II).

as ineligible for routing to avoid incurring these fees.²¹

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²² At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2012-129 on the subject line.

²¹ Id.

²² 15 U.S.C. 78s(b)(3)(A)(ii).

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-2012-129. 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-2012-129 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.²³

Kevin M. O'Neill
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).

Exhibit 5

New text is underlined; deleted text is in brackets.

NASDAQ OMX PHLX LLC¹ PRICING SCHEDULE

* * * * *

V. Routing Fees

[Exchange]	[Customer]	[Professional]	[Firm/Broker- Dealer/Specialist/Market Maker]
[NYSE AMEX]	[\$0.11]	[\$0.31]	[\$0.55]
[BATS Penny]	[\$0.55]	[\$0.55]	[\$0.55]
[BATS non-Penny]	[\$0.86]	[\$0.91]	[\$0.91]
[BOX]	[\$0.11]	[\$0.11]	[\$0.55]
[BX Options]	[\$0.11]	[\$0.54]	[\$0.54]
[CBOE]	[\$0.11]	[\$0.31]	[\$0.55]
[CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs and HOLDERS]	[\$0.29]	[\$0.31]	[\$0.55]
[C2]	[\$0.55]	[\$0.56]	[\$0.55]
[ISE]	[\$0.11]	[\$0.29]	[\$0.55]
[ISE Select Symbols ¹³]	[\$0.31]	[\$0.39]	[\$0.55]
[NYSE ARCA (Penny Pilot)]	[\$0.55]	[\$0.55]	[\$0.55]
[NYSE ARCA]	[\$0.11]	[\$0.11]	[\$0.55]

(Standard)]

[NOM Penny Pilot Options]	[\$0.54]	[\$0.54]	[\$0.55]
[NOM Non-Penny Pilot Options]	[\$0.86]	[\$0.91]	[\$0.91]

[¹³These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.]

• Routing Fees to BX Options and NOM: \$0.04 per contract fee in addition to the actual transaction fee assessed or rebate paid by these exchanges.

• Routing Fees to all other options exchanges: \$0.10 per contract fee in addition to the actual transaction fee assessed or rebate paid by the away market.

* * * * *

VII. OTHER MEMBER FEES

* * * * *

D. Appeal Fees

Review/Process Subordinated Loans	\$25
Forum Fee Pursuant to Rule 60	\$100
Review Fee Pursuant to Rule 124	\$250
<u>Catastrophic Error Fee Pursuant to Rule 1092</u>	<u>\$5,000</u>

* * * * *