

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of * 14	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2012 - * 24	Amendment No. (req. for Amendments *)	
Proposed Rule Change by NASDAQ OMX PHLX LLC. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input checked="" type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>				
<b>Description</b> Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). A proposal to adopt an administrative fee for th payment for order flow program.					
<b>Contact Information</b> 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 proposed rule change. First Name * Carla    Last Name * Behnfeldt Title * Associate General Counsel E-mail * carla.behnfeldt@nasdaqomx.com Telephone * (215) 496-5208    Fax					
<b>Signature</b> 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 officer. Date 02/21/2012 By Edward S. Knight    Executive Vice President and General Counsel (Name *)    (Title *) NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed. Edward S Knight,					

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information (required)**

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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 (required)**

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

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Exhibit Sent As Paper Document

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

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to amend its payment for order flow program. Phlx proposes to amend Section II of its Fee Schedule to adopt an administrative fee, as described further below.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 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 Fee 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 August 19, 2011. 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.

Questions and comments on the proposed rule change may be directed to Carla Behnfeldt at (215) 496-5208.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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

The Exchange currently has a payment-for-order-flow (“PFOF”) program that helps its Specialists<sup>3</sup> and Directed Registered Options Traders (“Directed ROTs”)<sup>4</sup> establish PFOF arrangements with an order flow provider in exchange for that order flow provider directing some or all of its order flow to that Specialist or Directed ROT. This program is funded through fees paid by Registered Options Traders (“ROTs”), Specialists and Directed ROTs and assessed on transactions resulting from customer orders (the “PFOF Fees”).<sup>5</sup>

These PFOF Fees are available to be disbursed by the Exchange according to the instructions of the Specialist units/Specialists or Directed ROTs to order flow providers who are members or member organizations who submit, as agent, customer orders to the Exchange through a member or member organization who is acting as agent for those customer orders. Any excess payment for order flow funds billed but not utilized by the Specialist or Directed ROT are carried forward unless the Directed ROT or Specialist elects to have those funds rebated to the applicable ROT, Directed ROT or Specialist on a

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<sup>3</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>4</sup> A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii). A “Directed ROT” is an ROT who is a Directed Participant. The term “Directed Participant” applies to transactions for the account of a Specialist or ROT resulting from a customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

<sup>5</sup> See Securities Exchange Act Release No. 59841 (April 29, 2009), 74 FR 21035 (May 6, 2009) (SR-Phlx-2009-38).

pro rata basis, reflected as a credit on the monthly invoices. At the end of each calendar quarter, the Exchange calculates the amount of excess funds from the previous quarter and subsequently rebates excess funds on a pro-rata basis to the applicable ROT, Directed ROT or Specialist who paid into that pool of funds.

The Exchange now proposes to adopt an administrative fee to offset its costs in administering the PFOF program. Specifically, Phlx proposes to assess an administrative fee of 0.45% of the total amount of PFOF Fees collected each month. Phlx will closely monitor the amount of funds raised by this administrative fee and amend the fee in the future if necessary, so that the fee provides sufficient funds to adequately offset Phlx's costs in administering the PFOF program.

Phlx proposes to implement this fee beginning on March 1, 2012. Phlx is not making any other changes to its PFOF program.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to assess the administrative fee in that it should permit the Exchange to offset its costs in administering the PFOF program. As noted above, the Exchange will closely monitor the amount of funds raised by this administrative fee and amend the fee in the future if necessary, so that the fee provides

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

sufficient funds to adequately offset the Exchange's costs in administering the PFOF program.

The Exchange believes that it is equitable and not unfairly discriminatory to assess the administrative fee because it would apply uniformly to all funds collected under the PFOF program as a means to offset costs of collecting and administering such funds.

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.

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,<sup>8</sup> 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.

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<sup>8</sup> 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 International Securities Exchange, LLC (“ISE”) currently assesses a similar fee to administer its PFOF program.<sup>9</sup> As noted in the ISE proposed rule change, Chicago Board Options Exchange, Incorporated (“CBOE”) also charges a similar fee.<sup>10</sup>

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. Applicable portion of Section II of the Exchange’s Fee Schedule.

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<sup>9</sup> See Securities Exchange Act Release No. 60801 (October 8, 2009), 74 FR 52994 (October 15, 2009) (SR-ISE-2009-70).

<sup>10</sup> See Securities Exchange Act Release Nos. 56289 (August 20, 2007), 72 FR 49030 (August 27, 2007) (SR-CBOE-2007-95) and 56640 (October 11, 2007), 72 FR 58916 (October 17, 2007) (SR-CBOE-2007-118). The CBOE administrative fee differs from ISE’s administrative fee and the Exchange’s proposed administrative fee, in that it limits the total amount that a given market participant would contribute to the administrative fee and provides funds to an association of CBOE members for its costs and expenses in supporting CBOE’s PFOF (or “marketing fee”) program and in seeking to bring order flow to CBOE.

**EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2012-24)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC to Adopt an Administrative Fee for the Payment For Order Flow Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 21, 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 payment for order flow program. Phlx proposes to amend Section II of its Fee Schedule to adopt an administrative fee, as described further below.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2012.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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

The Exchange currently has a payment-for-order-flow (“PFOF”) program that helps its Specialists<sup>3</sup> and Directed Registered Options Traders (“Directed ROTs”)<sup>4</sup> establish PFOF arrangements with an order flow provider in exchange for that order flow provider directing some or all of its order flow to that Specialist or Directed ROT. This program is funded through fees paid by Registered Options Traders (“ROTs”), Specialists and Directed ROTs and assessed on transactions resulting from customer orders (the “PFOF Fees”).<sup>5</sup>

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<sup>3</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>4</sup> A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii). A “Directed ROT” is an ROT who is a Directed Participant. The term “Directed Participant” applies to transactions for the account of a Specialist or ROT resulting from a customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

<sup>5</sup> See Securities Exchange Act Release No. 59841 (April 29, 2009), 74 FR 21035 (May 6, 2009) (SR-Phlx-2009-38).

These PFOF Fees are available to be disbursed by the Exchange according to the instructions of the Specialist units/Specialists or Directed ROTs to order flow providers who are members or member organizations who submit, as agent, customer orders to the Exchange through a member or member organization who is acting as agent for those customer orders. Any excess payment for order flow funds billed but not utilized by the Specialist or Directed ROT are carried forward unless the Directed ROT or Specialist elects to have those funds rebated to the applicable ROT, Directed ROT or Specialist on a pro rata basis, reflected as a credit on the monthly invoices. At the end of each calendar quarter, the Exchange calculates the amount of excess funds from the previous quarter and subsequently rebates excess funds on a pro-rata basis to the applicable ROT, Directed ROT or Specialist who paid into that pool of funds.

The Exchange now proposes to adopt an administrative fee to offset its costs in administering the PFOF program. Specifically, Phlx proposes to assess an administrative fee of 0.45% of the total amount of PFOF Fees collected each month. Phlx will closely monitor the amount of funds raised by this administrative fee and amend the fee in the future if necessary, so that the fee provides sufficient funds to adequately offset Phlx's costs in administering the PFOF program.

Phlx proposes to implement this fee beginning on March 1, 2012. Phlx is not making any other changes to its PFOF program.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of

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<sup>6</sup> 15 U.S.C. 78f(b).

the Act<sup>7</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to assess the administrative fee in that it should permit the Exchange to offset its costs in administering the PFOF program. As noted above, the Exchange will closely monitor the amount of funds raised by this administrative fee and amend the fee in the future if necessary, so that the fee provides sufficient funds to adequately offset the Exchange's costs in administering the PFOF program.

The Exchange believes that it is equitable and not unfairly discriminatory to assess the administrative fee because it would apply uniformly to all funds collected under the PFOF program as a means to offset costs of collecting and administering such funds.

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.

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

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<sup>7</sup> 15 U.S.C. 78f(b)(4).

### 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.<sup>8</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-24 on the subject line.

#### Paper comments:

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

All submissions should refer to File Number SR-Phlx-2012-24. This file number should be included on the subject line if e-mail is used. To help the Commission process

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2012-24 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.<sup>9</sup>

Kevin M O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined.*

**NASDAQ OMX PHLX LLC FEE SCHEDULE**

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**II. Equity Options Fees**

**(Includes options overlying equities, ETFs, ETNs, indexes and HOLDERS which are Multiply Listed)**

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**Payment For Order Flow Fees**

Options that are trading in the Penny Pilot Program	\$.25 per contract
Remaining Equity Options	\$.70 per contract

- For trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange: Assessed on Market Makers and Directed ROTs on those trades when the Specialist unit or Directed ROT elects to participate in the payment for order flow program.
- No payment for order flow fees will be assessed on trades that are not delivered electronically.
- No payment for order flow fees will be assessed on Professional orders.
- Payment for Order Flow Fees will be assessed on transactions resulting from customer orders and are available to be disbursed by the Exchange according to the instructions of the Specialist units/Specialists or Directed ROTs to order flow providers who are members or member organizations, who submit, as agent, customer orders to the Exchange or non-members or non-member organizations who submit, as agent, customer orders to the Exchange through a member or member organization who is acting as agent for those customer orders.
- Any excess payment for order flow funds billed but not utilized by the Specialist or Directed ROT will be carried forward unless the Directed ROT or Specialist elects to have those funds rebated to the applicable ROT, Directed ROT or Specialist on a pro rata basis, reflected as a credit on the monthly invoices. At the end of each calendar quarter, the Exchange will calculate the amount of excess funds from the previous quarter and subsequently rebate excess funds on a pro-rata basis to the applicable ROT, Directed ROT or Specialist who paid into that pool of funds.
- Each month, the Exchange assesses an administrative fee of .45% on the total amount of the funds collected each month.

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