

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

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No.\* SR - 2012 - \* 26

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"/>
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## Rule

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

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

Relating to Equity Options Fees

**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 proposed rule change.

First Name *	Angela	Last Name *	Dunn
Title *	Associate General Counsel		
E-mail *	angela.dunn@nasdaqomx.com		
Telephone *	(215) 496-5692	Fax	<input type="text"/>

**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 officer.

Date 02/29/2012

By Angela Saccomandi Dunn  
(Name \*)Associate General Counsel  
(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.

Angela Dunn, angela.dunn@phlx.com

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 Section II of the Exchange’s Fee Schedule entitled “Equity Options Fees.”

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 the 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 Angela Saccomandi Dunn, Associate General Counsel, at (215) 496-5692.

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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 proposes to amend Section II<sup>3</sup> of the Exchange's Fee Schedule to:

(i) amend non-Penny Pilot<sup>4</sup> option transaction fees for electronically-delivered Broker-Dealer and Firm orders; (ii) amend rebates paid for electronically-delivered Customer orders; and (iii) increase Market Maker<sup>5</sup> and Firm fees on certain electronically-delivered Customer transactions, in order to attract additional order flow to the Exchange and subsidize the cost of offering rebates to increase market participation through increased liquidity.

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<sup>3</sup> Section II of the Fee Schedule includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are Multiply Listed.

<sup>4</sup> Non-Penny refers to options classes not in the Penny Pilot. The Penny Pilot was established in January 2007; and in October 2009, it was expanded and extended through June 30, 2012. See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74) (notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR-Phlx-2009-91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR-Phlx-2009-94) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR-Phlx-2010-12) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62028 (May 4, 2010), 75 FR 25890 (May 10, 2010) (SR-Phlx-2010-65) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62616 (July 30, 2010), 75 FR 47664 (August 6, 2010) (SR-Phlx-2010-103) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 63395 (November 30, 2010), 75 FR 76062 (December 7, 2010) (SR-Phlx-2010-167) (notice of filing and immediate effectiveness extending the Penny Pilot); and 65976 (December 15, 2011), 76 FR 79247 (December 21, 2011) (SR-Phlx-2011-172) (notice of filing and immediate effectiveness extending the Penny Pilot). See also Exchange Rule 1034.

<sup>5</sup> The term "Market Maker" is utilized herein to describe fees and rebates applicable to Specialists, Registered Options Traders, Streaming Quote Traders and Remote Streaming Quote Traders.

The Exchange currently does not distinguish between non-electronically and electronically-delivered<sup>6</sup> Firm transactions in Section II of the Fee Schedule. The Exchange, however, currently does categorize its Market Maker and Broker-Dealer fees by non-electronically and electronically-delivered orders. At this time, the Exchange proposes to create separate fees for non-electronically versus electronically-delivered Firm orders in further recognition of the distinction between the floor order entry model and the electronic model and also in response to competition along the same lines. The Exchange currently assesses the following fees for Firms in Section II of the Fee Schedule:

	<b>Firm</b>
<b>Options Transaction Charge (Penny Pilot)</b>	\$.25
<b>Options Transaction Charge (non-Penny Pilot)</b>	\$.25
<b>Options Surcharge in RUT, MNX and NDX</b>	\$.15
<b>Options Surcharge in BKX</b>	\$.10
<b>FLEX Options</b>	\$.10
<b>Cabinet Options</b>	\$.10

The Exchange proposes to assess the same fees for non-electronically and electronically-delivered Firm orders with the exception of the options transaction charge for a non-Penny Pilot which is electronically-delivered. The Exchange proposes to amend the current \$.25 per contract transaction Firm fee for a non-Penny Pilot, electronically-

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<sup>6</sup> A transaction resulting from an order that was electronically delivered utilizes Phlx XL II. See Exchange Rules 1014 and 1080. Electronically delivered orders do not include orders delivered through the Floor Broker Management System. A transaction resulting from an order that is non-electronically-delivered is represented on the trading floor by a floor broker. See Exchange Rule 1063. All orders will be either electronically or non-electronically delivered.

delivered options order to \$.40 per contract. Section II of the Fee Schedule would be amended to reflect the Firm transaction charges as follows:

	Firm	
	Electronic	Non-Electronic
<b>Options Transaction Charge (Penny Pilot)</b>	\$.25	\$.25
<b>Options Transaction Charge (non-Penny Pilot)</b>	\$.40	\$.25
<b>Options Surcharge in RUT, MNX and NDX</b>	\$.15	\$.15
<b>Options Surcharge in BKX</b>	\$.10	\$.10
<b>FLEX Options</b>	\$.10	\$.10
<b>Cabinet Options</b>	\$.10	\$.10

The Exchange also proposes to increase the current Broker-Dealer electronically-delivered, non-Penny Pilot options transaction fee from \$0.45 per contract to \$.50 per contract. The Exchange believes that increasing both the Firm and Broker-Dealer transaction charges for electronically-delivered, non-Penny Pilot Options will allow the Exchange to compete more effectively by subsidizing rebates offered on electronically-delivered Customer orders.

The Exchange also proposes to amend the current rebate applicable to Customer Complex Orders<sup>7</sup> that are electronically-delivered. The Exchange currently pays a rebate of \$0.05 per contract for Customer Complex Orders that are electronically-delivered.

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<sup>7</sup> A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

The Exchange proposes to increase this rebate to \$0.07 per contract and apply the rebate to all Customer orders (simple and Complex Orders) that are electronically-delivered provided the member has an average daily volume of 50,000 contracts or greater in a given month. PIXL Orders<sup>8</sup> and QCC Orders<sup>9</sup> would be ineligible for the rebate and excluded from the calculation of the 50,000 contracts. The Exchange believes that this rebate will encourage members to transact a greater number of orders and attract Customer order flow.

Finally, the Exchange proposes to amend the current fees which are assessed on Market Makers and Firms that are on the contra-side of an electronically-delivered and executed Customer Complex Order. Currently, the Exchange assesses Market Makers

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<sup>8</sup> A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity ("PIXL Order") against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent ("Initiating Order") provided it submits the PIXL order for electronic execution into the PIXL Auction ("Auction") pursuant to Rule 1080. See Exchange Rule 1080(n).

<sup>9</sup> A QCC Order is comprised of an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. See Rule 1080(o). See also Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx-2011-47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades ("QCTs") that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of Regulation NMS). Floor QCC Orders are not electronically submitted. A Floor QCC Order must: (i) be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the National Best Bid and Offer ("NBBO"); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. See Rule 1064(e). See also Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-Phlx-2011-56).

that (i) are on the contra-side of an electronically-delivered and executed Customer Complex Order; and (ii) have reached the Monthly Market Maker Cap,<sup>10</sup> a \$0.05 per contract fee. The Exchange is proposing to increase the fee assessed to Market Makers from \$0.05 to \$0.07 per contract and assess the fee on orders that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Market Maker Cap, excluding PIXL Orders. The increased fee would therefore apply to all Customer orders (both simple and Complex Orders). The Exchange is proposing the same amendment to the Monthly Firm Fee Cap.<sup>11</sup> Currently, the Exchange assesses Firms that (i) are on the contra-side of an electronically-delivered and executed Customer Complex Order; and (ii) have reached the Monthly Firm Fee Cap, a \$0.05 per contract fee. The Exchange likewise proposes to assess Firms that (i) are on the contra-side of an electronically-delivered and executed Customer order (both simple and Complex Orders); and (ii) have reached the Monthly Firm Fee Cap, an increased fee of \$0.07 per contract, excluding PIXL Orders.<sup>12</sup> The Exchange believes that these

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<sup>10</sup> Market Makers are currently subject to a Monthly Market Maker Cap of \$550,000. The trading activity of separate Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is at least 75% common ownership between the member organizations.

<sup>11</sup> Firms are subject to a maximum fee of \$75,000 ("Monthly Firm Fee Cap"). Firm equity option transaction fees and QCC Transaction Fees in the aggregate, for one billing month, may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, short stock interest and reversal and conversion strategy executions are excluded from the Monthly Firm Fee Cap. The Firm equity options transaction fees are waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

<sup>12</sup> QCC Orders are assessed a \$0.07 Service Fee today, which applies to every contract side of the QCC Order and Floor QCC Order once a Firm or Market Maker has reached the Monthly Firm Fee Cap or Monthly Market Maker Cap, respectively.

increased fees assessed on Market Makers and Firms will allow the Exchange to continue to subsidize the rebates it offers to attract greater liquidity and Customer order flow to the Exchange.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</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 also believes that it is an equitable allocation of reasonable rebates among Exchange members and other persons using its facilities.

The Exchange believes that its proposal to amend both the Firm and Broker-Dealer transaction charges for electronically-delivered, non-Penny Pilot Options is reasonable because these fees are within the range of fees assessed by other Exchanges. NYSE Arca, Inc. (“NYSE Arca”) assesses Firms and Broker-Dealers a \$0.50 per contract fee for electronic orders.<sup>15</sup> The Exchange also proposes to assess Firms and Broker-Dealers these transaction fees in order to subsidize the rebates the Exchange pays members to incentivize liquidity.

The Exchange believes that its proposal to assess Firms and Broker-Dealers increased transaction fees for electronically-delivered, non-Penny Pilot Options is equitable and not unfairly discriminatory because the fees proposed for Firms and

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> See NYSE Arca’s Fee Schedule.

Broker-Dealers are within the range of fees assessed by the Exchange in Section I of the Fee Schedule.<sup>16</sup> Firms and Broker Dealers are assessed a \$0.45 per contract Fee for Removing Liquidity when transacting a Single contra-side order in a Select Symbol.<sup>17</sup> In addition, these fees would be assessed uniformly to all Firms and Broker-Dealers. The Exchange also believes that it is equitable and not unfairly discriminatory to assess Market Makers transacting electronically-delivered, non-Penny Pilot Options a lower fee<sup>18</sup> as compared to Firms and Broker-Dealers because Market Makers have burdensome quoting obligations<sup>19</sup> to the market which do not apply to Firms and Broker-Dealers. Customers are not assessed a fee for transacting non-Penny Pilot Options. The Exchange believes that not assessing Customers a fee for electronically-delivered, non-Penny Pilot Options benefits all market participants, because of the increased liquidity such Customer order flow brings to the Exchange. Also, Professionals continue to be assessed a higher fee as compared to Customers in non-Penny Pilot Options. This fee is the same rate (\$0.20 per contract) as the Professional fee for Penny Pilot Options.

The Exchange believes that its proposal to increase the current rebate paid for Customer Complex Orders from \$0.05 to \$0.07 per contract is reasonable because the Exchange is also expanding the rebate to apply to all Customer orders (both simple and

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<sup>16</sup> Section I of the Fee Schedule, entitled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols,” applies to Select Symbols which are electronically traded. These Select Symbols are defined in Section I and are Multiply Listed, similar to the options in Section II of the Fee Schedule.

<sup>17</sup> See Section I of the Exchange’s Fee Schedule.

<sup>18</sup> Market Makers are assessed a fee of \$0.23 per contract for electronically-delivered, non-Penny Pilot Options.

<sup>19</sup> See Exchange Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

Complex Orders), which are electronically-delivered.<sup>20</sup> The Exchange's proposal also limits the rebate to a member who has an average daily volume of 50,000 contracts or greater in a given month. The Exchange believes that this proposed rebate is reasonable because it seeks to incentivize members to transact a greater number of Customer orders, which in turn benefits all market participants because of the increased liquidity such orders bring to the market. Similar to current fees on the NASDAQ Options Market LLC ("NOM"), the Exchange is proposing to offer a rebate based on a certain volume criteria.<sup>21</sup> In particular, the Exchange believes the 50,000 contracts volume threshold is reasonable because the requirement to transact an average daily volume of at least 50,000 contracts or greater in a given month, should incentivize members to transact a greater number of orders on the Exchange to obtain the benefit of the rebate. The Exchange believes that the volume threshold should incentivize members to increase liquidity at the Exchange, thereby benefitting all market participants. Similar to this proposal, the Chicago Board Options Exchange Incorporated ("CBOE") offers a volume incentive program. CBOE credits each Trading Permit Holder ("TPH") a certain per contract amount based on the volume of customer contracts the TPH executes electronically at CBOE in multiply-listed option classes (excluding qualified contingent cross trades).<sup>22</sup>

The Exchange's proposal to exclude PIXL and QCC Orders from the rebate and volume

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<sup>20</sup> Today the rebate of \$0.05 per contract is paid for a Customer Complex Order that is electronically-delivered.

<sup>21</sup> NOM currently has a tiered rebate with certain volume criteria for Customer orders in Penny Pilot Options. See Chapter XV, Section 2 entitled "NASDAQ Options Market – Fees."

<sup>22</sup> See CBOE's Fees Schedule. CBOE offers a per contract credit ranging from \$.00 to \$.20 per contract based on a certain volume threshold which ranges from 0 to 375,001 plus customer contracts per day.

threshold calculation is reasonable, equitable and not unfairly discriminatory because PIXL and QCC Orders have the opportunity to receive rebates today,<sup>23</sup> and the Exchange is paying the rebate uniformly to its members.

The Exchange believes that its proposal to offer a rebate of \$0.07 per contract for Customer orders that are electronically-delivered, provided a member has an average daily volume of 50,000 contracts or greater in a given month, is equitable and not unfairly discriminatory because the Exchange is seeking to further incentivize members to send additional Customer order flow to the Exchange. Once the volume threshold is met, the Exchange would pay a \$0.07 per contract rebate, on all applicable Customer orders, uniformly to members. The Exchange believes that by expanding the rebate to apply to all Customer orders, and not just Complex Orders, and also offering a higher rebate, provides members with an added incentive to successfully take advantage of the rebate by executing a greater number of orders at the Exchange to the benefit of all participants. In addition, the Exchange believes that its proposal to require members to transact an average daily volume of 50,000 contracts or greater in a given month to obtain the rebate is equitable and not unfairly discriminatory because the volume threshold

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<sup>23</sup> See Sections II and IV (A) of the Exchange's Fee Schedule. A PIXL Order will receive the rebate for adding liquidity when executed against contra-side order(s) that respond to the PIXL auction broadcast message as well as when executed against contra-side quotes and unrelated orders on the PHLX book that arrived after the PIXL auction was initiated. A rebate of \$0.07 per contract is paid for all qualifying executed QCC Orders up to 1,000,000 contracts in a month, as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e), except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend, merger or short stock interest strategy and executions subject to the Reversal and Conversion Cap (as defined in Section II). If a member exceeds 1,000,000 contracts in a month of qualifying executed QCC Orders, a \$0.10 rebate will be paid on all qualifying executed QCC Orders, as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), in that month.

should incentivize members to bring greater liquidity to the Exchange, thereby benefitting all market participants.

The Exchange believes that the proposed Firm and Market Maker fees of \$0.07 per contract, when a Firm or Market Maker is on the contra-side of a an electronically-delivered and executed Customer order and has reached the respective Monthly Firm Fee Cap or Monthly Market Maker Cap, are reasonable because the fees would continue to defray the cost of paying Customer rebates, which are offered in certain circumstances. Specifically, the Exchange's proposal to increase the fees applicable to Firms and Market Makers from \$0.05 to \$0.07 per contract and expand the applicable orders to all Customer orders, and not just Complex Orders, is reasonable because the Exchange desires to subsidize its proposal to increase the rebate on Customer orders from \$0.05 to \$0.07 per contract and apply the rebate to all Customer orders, provided a volume threshold is met. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to exclude PIXL Orders because those orders have their own fees and rebates and the Exchange does not believe that additional rebates are required with respect to PIXL Orders.<sup>24</sup> In addition, QCC Orders today pay a Service Fee of \$0.07 per side in certain circumstances.<sup>25</sup> Also, the Exchange would uniformly assess the proposed fees on its members.

The Exchange believes that its proposal to assess increased fees of \$0.07 per contract on Market Makers and Firms that have reached the respective cap and are on the contra-side of a Customer order is equitable and not unfairly discriminatory because the

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<sup>24</sup> See Section IV (A) of the Exchange's Fee Schedule.

<sup>25</sup> See Section II of the Exchange's Fee Schedule.

fees would only be assessed once the applicable cap is reached and would uniformly apply to all Market Makers and Firms that have reached the respective cap. Both Market Makers and Firms benefit from the liquidity which the proposed \$0.07 per contract rebate on Customer orders brings to the Exchange, which rebate the proposed fees subsidize. In addition, the proposed fees would apply only in certain circumstances where the Market Maker or Firm is not otherwise subject to transaction fees (because the applicable cap has been reached) and specifically on the contra-side of a Customer order, which is electronically-delivered.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the fees it charges and rebates it pays must remain competitive with fees and rebates charged/paid by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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>26</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.

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 Fee Schedule.

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<sup>26</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2012-26)

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

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 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 Section II of the Exchange’s Fee Schedule entitled “Equity Options Fees.”

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=PHLXRulefilings>, 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 proposes to amend Section II<sup>3</sup> of the Exchange's Fee Schedule to:

- (i) amend non-Penny Pilot<sup>4</sup> option transaction fees for electronically-delivered Broker-Dealer and Firm orders; (ii) amend rebates paid for electronically-delivered Customer

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<sup>3</sup> Section II of the Fee Schedule includes options overlying equities, ETFs, ETNs, indexes and HOLDERS which are Multiply Listed.

<sup>4</sup> Non-Penny refers to options classes not in the Penny Pilot. The Penny Pilot was established in January 2007; and in October 2009, it was expanded and extended through June 30, 2012. See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74) (notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR-Phlx-2009-91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR-Phlx-2009-94) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR-Phlx-2010-12) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62028 (May 4, 2010), 75 FR 25890 (May 10, 2010) (SR-Phlx-2010-65) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62616 (July 30, 2010), 75 FR 47664 (August 6, 2010) (SR-Phlx-2010-103) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 63395 (November 30, 2010), 75 FR 76062 (December 7, 2010) (SR-Phlx-2010-167) (notice of filing and immediate effectiveness extending the Penny Pilot); and 65976 (December 15, 2011), 76 FR 79247 (December 21, 2011) (SR-Phlx-2011-172) (notice of filing and immediate effectiveness extending the Penny Pilot). See also Exchange Rule 1034.

orders; and (iii) increase Market Maker<sup>5</sup> and Firm fees on certain electronically-delivered Customer transactions, in order to attract additional order flow to the Exchange and subsidize the cost of offering rebates to increase market participation through increased liquidity.

The Exchange currently does not distinguish between non-electronically and electronically-delivered<sup>6</sup> Firm transactions in Section II of the Fee Schedule. The Exchange, however, currently does categorize its Market Maker and Broker-Dealer fees by non-electronically and electronically-delivered orders. At this time, the Exchange proposes to create separate fees for non-electronically versus electronically-delivered Firm orders in further recognition of the distinction between the floor order entry model and the electronic model and also in response to competition along the same lines. The Exchange currently assesses the following fees for Firms in Section II of the Fee Schedule:

	<b>Firm</b>
<b>Options Transaction Charge (Penny Pilot)</b>	\$.25
<b>Options Transaction Charge (non-Penny Pilot)</b>	\$.25
<b>Options Surcharge in RUT, MNX and NDX</b>	\$.15
<b>Options Surcharge in BKX</b>	\$.10
<b>FLEX Options</b>	\$.10

<sup>5</sup> The term “Market Maker” is utilized herein to describe fees and rebates applicable to Specialists, Registered Options Traders, Streaming Quote Traders and Remote Streaming Quote Traders.

<sup>6</sup> A transaction resulting from an order that was electronically delivered utilizes Phlx XL II. See Exchange Rules 1014 and 1080. Electronically delivered orders do not include orders delivered through the Floor Broker Management System. A transaction resulting from an order that is non-electronically-delivered is represented on the trading floor by a floor broker. See Exchange Rule 1063. All orders will be either electronically or non-electronically delivered.

<b>Cabinet Options</b>	\$ .10
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The Exchange proposes to assess the same fees for non-electronically and electronically-delivered Firm orders with the exception of the options transaction charge for a non-Penny Pilot which is electronically-delivered. The Exchange proposes to amend the current \$.25 per contract transaction Firm fee for a non-Penny Pilot, electronically-delivered options order to \$.40 per contract. Section II of the Fee Schedule would be amended to reflect the Firm transaction charges as follows:

	<b>Firm</b>	
	<b>Electronic</b>	<b>Non-Electronic</b>
<b>Options Transaction Charge (Penny Pilot)</b>	\$ .25	\$ .25
<b>Options Transaction Charge (non-Penny Pilot)</b>	\$ .40	\$ .25
<b>Options Surcharge in RUT, MNX and NDX</b>	\$ .15	\$ .15
<b>Options Surcharge in BXX</b>	\$ .10	\$ .10
<b>FLEX Options</b>	\$ .10	\$ .10
<b>Cabinet Options</b>	\$ .10	\$ .10

The Exchange also proposes to increase the current Broker-Dealer electronically-delivered, non-Penny Pilot options transaction fee from \$0.45 per contract to \$.50 per contract. The Exchange believes that increasing both the Firm and Broker-Dealer transaction charges for electronically-delivered, non-Penny Pilot Options will allow the Exchange to compete more effectively by subsidizing rebates offered on electronically-delivered Customer orders.

The Exchange also proposes to amend the current rebate applicable to Customer Complex Orders<sup>7</sup> that are electronically-delivered. The Exchange currently pays a rebate of \$0.05 per contract for Customer Complex Orders that are electronically-delivered. The Exchange proposes to increase this rebate to \$0.07 per contract and apply the rebate to all Customer orders (simple and Complex Orders) that are electronically-delivered provided the member has an average daily volume of 50,000 contracts or greater in a given month. PIXL Orders<sup>8</sup> and QCC Orders<sup>9</sup> would be ineligible for the rebate and

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<sup>7</sup> A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

<sup>8</sup> A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity ("PIXL Order") against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent ("Initiating Order") provided it submits the PIXL order for electronic execution into the PIXL Auction ("Auction") pursuant to Rule 1080. See Exchange Rule 1080(n).

<sup>9</sup> A QCC Order is comprised of an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. See Rule 1080(o). See also Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx-2011-47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades ("QCTs") that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of Regulation NMS). Floor QCC Orders are not electronically submitted. A Floor QCC Order must: (i) be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the National Best Bid and Offer ("NBBO"); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract

excluded from the calculation of the 50,000 contracts. The Exchange believes that this rebate will encourage members to transact a greater number of orders and attract Customer order flow.

Finally, the Exchange proposes to amend the current fees which are assessed on Market Makers and Firms that are on the contra-side of an electronically-delivered and executed Customer Complex Order. Currently, the Exchange assesses Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer Complex Order; and (ii) have reached the Monthly Market Maker Cap,<sup>10</sup> a \$0.05 per contract fee. The Exchange is proposing to increase the fee assessed to Market Makers from \$0.05 to \$0.07 per contract and assess the fee on orders that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Market Maker Cap, excluding PIXL Orders. The increased fee would therefore apply to all Customer orders (both simple and Complex Orders). The Exchange is proposing the same amendment to the Monthly Firm Fee Cap.<sup>11</sup> Currently, the

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legs. See Rule 1064(e). See also Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-Phlx-2011-56).

<sup>10</sup> Market Makers are currently subject to a Monthly Market Maker Cap of \$550,000. The trading activity of separate Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is at least 75% common ownership between the member organizations.

<sup>11</sup> Firms are subject to a maximum fee of \$75,000 ("Monthly Firm Fee Cap"). Firm equity option transaction fees and QCC Transaction Fees in the aggregate, for one billing month, may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, short stock interest and reversal and conversion strategy executions are excluded from the Monthly Firm Fee Cap. The Firm equity options transaction fees are waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

Exchange assesses Firms that (i) are on the contra-side of an electronically-delivered and executed Customer Complex Order; and (ii) have reached the Monthly Firm Fee Cap, a \$0.05 per contract fee. The Exchange likewise proposes to assess Firms that (i) are on the contra-side of an electronically-delivered and executed Customer order (both simple and Complex Orders); and (ii) have reached the Monthly Firm Fee Cap, an increased fee of \$0.07 per contract, excluding PIXL Orders.<sup>12</sup> The Exchange believes that these increased fees assessed on Market Makers and Firms will allow the Exchange to continue to subsidize the rebates it offers to attract greater liquidity and Customer order flow to the Exchange.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</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 also believes that it is an equitable allocation of reasonable rebates among Exchange members and other persons using its facilities.

The Exchange believes that its proposal to amend both the Firm and Broker-Dealer transaction charges for electronically-delivered, non-Penny Pilot Options is reasonable because these fees are within the range of fees assessed by other Exchanges.

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<sup>12</sup> QCC Orders are assessed a \$0.07 Service Fee today, which applies to every contract side of the QCC Order and Floor QCC Order once a Firm or Market Maker has reached the Monthly Firm Fee Cap or Monthly Market Maker Cap, respectively.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

NYSE Arca, Inc. (“NYSE Arca”) assesses Firms and Broker-Dealers a \$0.50 per contract fee for electronic orders.<sup>15</sup> The Exchange also proposes to assess Firms and Broker-Dealers these transaction fees in order to subsidize the rebates the Exchange pays members to incentivize liquidity.

The Exchange believes that its proposal to assess Firms and Broker-Dealers increased transaction fees for electronically-delivered, non-Penny Pilot Options is equitable and not unfairly discriminatory because the fees proposed for Firms and Broker-Dealers are within the range of fees assessed by the Exchange in Section I of the Fee Schedule.<sup>16</sup> Firms and Broker Dealers are assessed a \$0.45 per contract Fee for Removing Liquidity when transacting a Single contra-side order in a Select Symbol.<sup>17</sup> In addition, these fees would be assessed uniformly to all Firms and Broker-Dealers. The Exchange also believes that it is equitable and not unfairly discriminatory to assess Market Makers transacting electronically-delivered, non-Penny Pilot Options a lower fee<sup>18</sup> as compared to Firms and Broker-Dealers because Market Makers have burdensome quoting obligations<sup>19</sup> to the market which do not apply to Firms and Broker-Dealers. Customers are not assessed a fee for transacting non-Penny Pilot Options. The

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<sup>15</sup> See NYSE Arca’s Fee Schedule.

<sup>16</sup> Section I of the Fee Schedule, entitled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols,” applies to Select Symbols which are electronically traded. These Select Symbols are defined in Section I and are Multiply Listed, similar to the options in Section II of the Fee Schedule.

<sup>17</sup> See Section I of the Exchange’s Fee Schedule.

<sup>18</sup> Market Makers are assessed a fee of \$0.23 per contract for electronically-delivered, non-Penny Pilot Options.

<sup>19</sup> See Exchange Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

Exchange believes that not assessing Customers a fee for electronically-delivered, non-Penny Pilot Options benefits all market participants, because of the increased liquidity such Customer order flow brings to the Exchange. Also, Professionals continue to be assessed a higher fee as compared to Customers in non-Penny Pilot Options. This fee is the same rate (\$0.20 per contract) as the Professional fee for Penny Pilot Options.

The Exchange believes that its proposal to increase the current rebate paid for Customer Complex Orders from \$0.05 to \$0.07 per contract is reasonable because the Exchange is also expanding the rebate to apply to all Customer orders (both simple and Complex Orders), which are electronically-delivered.<sup>20</sup> The Exchange's proposal also limits the rebate to a member who has an average daily volume of 50,000 contracts or greater in a given month. The Exchange believes that this proposed rebate is reasonable because it seeks to incentivize members to transact a greater number of Customer orders, which in turn benefits all market participants because of the increased liquidity such orders bring to the market. Similar to current fees on the NASDAQ Options Market LLC ("NOM"), the Exchange is proposing to offer a rebate based on a certain volume criteria.<sup>21</sup> In particular, the Exchange believes the 50,000 contracts volume threshold is reasonable because the requirement to transact an average daily volume of at least 50,000 contracts or greater in a given month, should incentivize members to transact a greater number of orders on the Exchange to obtain the benefit of the rebate. The Exchange believes that the volume threshold should incentivize members to increase liquidity at the

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<sup>20</sup> Today the rebate of \$0.05 per contract is paid for a Customer Complex Order that is electronically-delivered.

<sup>21</sup> NOM currently has a tiered rebate with certain volume criteria for Customer orders in Penny Pilot Options. See Chapter XV, Section 2 entitled "NASDAQ Options Market – Fees."

Exchange, thereby benefitting all market participants. Similar to this proposal, the Chicago Board Options Exchange Incorporated (“CBOE”) offers a volume incentive program. CBOE credits each Trading Permit Holder (“TPH”) a certain per contract amount based on the volume of customer contracts the TPH executes electronically at CBOE in multiply-listed option classes (excluding qualified contingent cross trades).<sup>22</sup> The Exchange’s proposal to exclude PIXL and QCC Orders from the rebate and volume threshold calculation is reasonable, equitable and not unfairly discriminatory because PIXL and QCC Orders have the opportunity to receive rebates today,<sup>23</sup> and the Exchange is paying the rebate uniformly to its members.

The Exchange believes that its proposal to offer a rebate of \$0.07 per contract for Customer orders that are electronically-delivered, provided a member has an average daily volume of 50,000 contracts or greater in a given month, is equitable and not unfairly discriminatory because the Exchange is seeking to further incentivize members to send additional Customer order flow to the Exchange. Once the volume threshold is met, the Exchange would pay a \$0.07 per contract rebate, on all applicable Customer

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<sup>22</sup> See CBOE’s Fees Schedule. CBOE offers a per contract credit ranging from \$.00 to \$.20 per contract based on a certain volume threshold which ranges from 0 to 375,001 plus customer contracts per day.

<sup>23</sup> See Sections II and IV (A) of the Exchange’s Fee Schedule. A PIXL Order will receive the rebate for adding liquidity when executed against contra-side order(s) that respond to the PIXL auction broadcast message as well as when executed against contra-side quotes and unrelated orders on the PHLX book that arrived after the PIXL auction was initiated. A rebate of \$0.07 per contract is paid for all qualifying executed QCC Orders up to 1,000,000 contracts in a month, as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e), except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend, merger or short stock interest strategy and executions subject to the Reversal and Conversion Cap (as defined in Section II). If a member exceeds 1,000,000 contracts in a month of qualifying executed QCC Orders, a \$0.10 rebate will be paid on all qualifying executed QCC Orders, as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), in that month.

orders, uniformly to members. The Exchange believes that by expanding the rebate to apply to all Customer orders, and not just Complex Orders, and also offering a higher rebate, provides members with an added incentive to successfully take advantage of the rebate by executing a greater number of orders at the Exchange to the benefit of all participants. In addition, the Exchange believes that its proposal to require members to transact an average daily volume of 50,000 contracts or greater in a given month to obtain the rebate is equitable and not unfairly discriminatory because the volume threshold should incentivize members to bring greater liquidity to the Exchange, thereby benefitting all market participants.

The Exchange believes that the proposed Firm and Market Maker fees of \$0.07 per contract, when a Firm or Market Maker is on the contra-side of a an electronically-delivered and executed Customer order and has reached the respective Monthly Firm Fee Cap or Monthly Market Maker Cap, are reasonable because the fees would continue to defray the cost of paying Customer rebates, which are offered in certain circumstances. Specifically, the Exchange's proposal to increase the fees applicable to Firms and Market Makers from \$0.05 to \$0.07 per contract and expand the applicable orders to all Customer orders, and not just Complex Orders, is reasonable because the Exchange desires to subsidize its proposal to increase the rebate on Customer orders from \$0.05 to \$0.07 per contract and apply the rebate to all Customer orders, provided a volume threshold is met. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to exclude PIXL Orders because those orders have their own fees and rebates and the Exchange does not believe that additional rebates are required with

respect to PIXL Orders.<sup>24</sup> In addition, QCC Orders today pay a Service Fee of \$0.07 per side in certain circumstances.<sup>25</sup> Also, the Exchange would uniformly assess the proposed fees on its members.

The Exchange believes that its proposal to assess increased fees of \$0.07 per contract on Market Makers and Firms that have reached the respective cap and are on the contra-side of a Customer order is equitable and not unfairly discriminatory because the fees would only be assessed once the applicable cap is reached and would uniformly apply to all Market Makers and Firms that have reached the respective cap. Both Market Makers and Firms benefit from the liquidity which the proposed \$0.07 per contract rebate on Customer orders brings to the Exchange, which rebate the proposed fees subsidize. In addition, the proposed fees would apply only in certain circumstances where the Market Maker or Firm is not otherwise subject to transaction fees (because the applicable cap has been reached) and specifically on the contra-side of a Customer order, which is electronically-delivered.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the fees it charges and rebates it pays must remain competitive with fees and rebates charged/paid by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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<sup>24</sup> See Section IV (A) of the Exchange's Fee Schedule.

<sup>25</sup> See Section II of the Exchange's Fee 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.

#### 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.<sup>26</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

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<sup>26</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-26 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-2012-26. 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-2012-26 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>27</sup>

Kevin M O'Neill  
Deputy Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

*New text is underlined; deleted text is in brackets.*

**NASDAQ OMX PHLX LLC  
FEE SCHEDULE**

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**II. Equity Options Fees**

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

	Customer	Professional	Market Maker		Broker-Dealer		Firm	
			Electronic	Non-Electronic	Electronic	Non-Electronic	<u>Electronic</u>	<u>Non-Electronic</u>
<b>Options Transaction Charge (Penny Pilot)</b>	\$ .00	\$ .20	\$ .22	\$ .25	\$ .45	\$ .25	\$ .25	<u>\$ .25</u>
<b>Options Transaction Charge (non-Penny Pilot)</b>	\$ .00	\$ .20	\$ .23	\$ .25	\$. <del>[45]</del> <u>50</u>	\$ .25	\$. <del>[25]</del> <u>40</u>	<u>\$ .25</u>
<b>Options Surcharge in RUT, MNX and NDX</b>	N/A	N/A	\$ .15	\$ .15	\$ .15	\$ .15	\$ .15	<u>\$ .15</u>
<b>Options Surcharge in BKX</b>	N/A	N/A	\$ .10	\$ .10	\$ .10	\$ .10	\$ .10	<u>\$ .10</u>
<b>FLEX Options</b>	\$ .00	\$ .10	\$ .10	\$ .10	\$ .10	\$ .10	\$ .10	<u>\$ .10</u>
<b>Cabinet Options</b>	\$ .00	\$ .10	\$ .10	\$ .10	\$ .10	\$ .10	\$ .10	<u>\$ .10</u>

- These fees are per contract.

- The Cabinet and FLEX Option Fees above are not in addition to the Options Transaction Charges.
- QCC Transaction Fees for a Market Maker, Professional, Firm and Broker-Dealer are \$0.20 per contract. QCC Transaction Fees apply to QCC Orders, as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e). A rebate of \$0.07 per contract will be paid for all qualifying executed QCC Orders up to 1,000,000 contracts in a month, as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e), except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend, merger or short stock interest strategy and executions subject to the Reversal and Conversion Cap (as defined in Section II). If a member exceeds 1,000,000 contracts in a month of qualifying executed QCC Orders, a \$0.10 rebate will be paid on all qualifying executed QCC Orders, as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), in that month.
- A rebate of \$0.0[5]7 per contract will be paid for Customer [Complex] Orders that are electronically-delivered to a member that has an average daily volume of 50,000 contracts or greater in a given month. PIXL Orders and QCC Orders are not eligible for the rebate and are excluded from the calculation of the average daily volume.
- Market Makers are subject to a "Monthly Market Maker Cap" of \$550,000 for equity option transaction fees and QCC Transaction Fees, as defined in this section above. The trading activity of separate Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is at least 75% common ownership between the member organizations. All dividend, merger, short stock interest and reversal and conversion strategy executions (as defined in this Section II) will be excluded from the Monthly Market Maker Cap. In addition, Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer [complex] order; and (ii) have reached the Monthly Market Maker Cap will be assessed a \$0.0[5]7 per contract fee, excluding PIXL Orders. For QCC Orders as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), a Service Fee of \$0.07 per side will apply once a Market Maker has reached the Monthly Market Maker Cap. This \$0.07 Service Fee will apply to every contract side of the QCC Order and Floor QCC Order after a Market Maker has reached the Monthly Market Maker Cap. The Service Fee will not be assessed to a Market Maker that does not reach the Monthly Market Maker Cap in a particular calendar month.

## II. Equity Options Fees

### (Includes options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed)

- Firms are subject to a maximum fee of \$75,000 ("Monthly Firm Fee Cap"). Firm equity option transaction fees and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, short stock interest and reversal and conversion strategy executions (as defined in this Section II) will be excluded from the Monthly Market Maker Cap. The Firm equity options transaction fees will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account (including FLEX and Cabinet equity options transaction fees). QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap. Member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Monthly Firm Fee Cap. In addition, Firms that (i) are on the contra-side of an electronically-delivered and executed Customer [complex] order; and (ii) have reached the Monthly Firm Fee Cap will be assessed a \$0.0[5]7 per contract fee, excluding PIXL Orders. For QCC Orders as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), a Service Fee of \$0.07 per side will apply once a Firm has reached the Monthly Firm Fee Cap. This \$0.07 Service Fee will apply to every contract side of the QCC Order and Floor QCC Order after a Firm has reached the Monthly Firm Fee Cap. The Service Fee will not be assessed to a Firm that does not reach the Monthly Firm Fee Cap in a particular calendar month.
- Proprietary orders of affiliates of member organizations (non-member organizations) that qualify for the Monthly Firm Fee Cap ("Qualifying Member Organization") effected for purposes of hedging the proprietary over-the-counter trading of the Qualifying Member Organization or its affiliates will be included in calculating the Monthly Firm Fee Cap. Member organizations must notify the Exchange in writing of the account(s) designated for purposes of hedging the proprietary over-the-counter trading of the Qualifying Member Organization or its affiliates. The Exchange would require member organizations to segregate other orders from that of its affiliates for those orders to be eligible for the Monthly Firm Fee Cap. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Monthly Firm Fee Cap.
- Market Maker, Professional, Firm and Broker-Dealer equity option transaction fees will be capped at \$1,000 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts. Equity option transaction fees for dividend, merger and short stock interest strategies combined will be further capped at the greater of \$10,000 per member or \$25,000 per member organization per month when such members are trading in their own proprietary accounts. A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration

date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

- Market Maker, Professional, Firm and Broker-Dealer options transaction fees in Multiply Listed Options will be capped at \$500 per day for reversal and conversion strategies executed on the same trading day in the same options class (“Reversal and Conversion Cap”). Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions are established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration. The Reversal and Conversion Cap will only apply to executions occurring on either of the two days preceding the standard options expiration date, which is typically the third Thursday and Friday of every month.

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