

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="24"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2012"/> - * <input type="text" value="35"/> Amendment No. (req. for Amendments *) <input type="text"/>
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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="text"/> <input type="text"/> 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 Exhibit 3 Sent As Paper Document **Description**

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

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 * Last Name *

Title *

E-mail *

Telephone * Fax

Signature

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

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

Date By
(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.

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

Add Remove View

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposes to amend: (i) Section II³ of the Fee Schedule entitled “Equity Options Fees” to assess Professionals an Options Surcharge in certain Multiply Listed Options; (ii) amend Section III⁴ of the Fee Schedule entitled “Singly Listed Options” to specify certain options that would be subject to the fees in this section; and (iii) amend the title of the Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 2, 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,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

⁴ Section III of the Fee Schedule includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are not listed on another exchange.

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.

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 of the Fee Schedule to assess Professionals an Options Surcharge for transactions in RUT,⁵ MNX,⁶ NDX⁷ and BKX.⁸ The Exchange believes that these surcharges will assist the Exchange in remaining competitive in these options. The Exchange also proposes to amend Section III of the Fee Schedule to specify that the following options: PHLX Semiconductor SectorSM (SOXSM), PHLX Housing SectorTM (HGXSM) and PHLX Oil Service SectorSM (OSXSM) are subject to the Singly Listed Options Transaction Charge even though these options will no longer be Singly Listed. These above-referenced options are proprietary indexes. These options will be listed on the NASDAQ Options Market LLC ("NOM") commencing on April 2, 2012. The Exchange seeks to continue to recoup fees associated

⁵ RUT represents the options on the Russell 2000® Index (the "Full Value Russell Index" or "RUT").

⁶ MNX represents options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX").

⁷ NDX represents options on the Nasdaq 100 Index⁷ traded under the symbol NDX ("NDX").

⁸ BKX represents the KBW Bank Index.

with maintaining these proprietary indexes. The Exchange is also proposing to amend the title of the Fee Schedule to more specifically describe the document.

Section II Amendments

The Exchange currently assesses an Options Surcharge for transactions in RUT, MNX and NDX of \$.15 per contract for Market Makers,⁹ Broker-Dealers and Firms.¹⁰ The Exchange also currently assesses an Options Surcharge for transactions in BKX of \$.10 per contract for Market Makers, Broker-Dealers and Firms.¹¹ The Exchange is proposing to assess Professionals an Options Surcharge for transactions in RUT, MNX and NDX of \$.15 per contract and an Options Surcharge for transactions in BKX of \$.10 per contract. Customers will continue not to be assessed an Options Surcharge in RUT, MNX, NDX and BKX.

Section III Amendments

Currently, SOX, HGX and OSX are Singly Listed Options subject to the following fees in Section III of the Fee Schedule:

	Customer	Professional	Market Maker	Firm	Broker-Dealer
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⁹ 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.

¹⁰ Currently, Professionals are not assessed an Options Surcharge for transactions in RUT, MNX or NDX.

¹¹ Currently, Professionals are not assessed an Options Surcharge for transactions in BKX.

Options Transaction Charge	\$0.35	\$0.45	\$0.35	\$0.45	\$0.45
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On April 2, 2012, NOM will list SOX, HGX and OSX and therefore these options will become Multiply Listed. The Exchange proposes to continue to assess SOX, HGX and OSX the Singly Listed Options Transaction Charges in Section III by specifying that these index options will be subject to Section III fees, even though they will no longer be Singly Listed. The Exchange also proposes to indicate in Section II of the Fee Schedule that SOX, HGX and OSX would be subject to the fees in Section III.

Other Amendments

The Exchange is also proposing to amend the title of the “Fee Schedule” to “Pricing Schedule” to more specifically describe this document.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ 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’s proposal to assess Professionals a \$.15 per contract Options Surcharge for transactions in RUT, MNX and NDX and a \$.10 per contract Options Surcharge for transactions in BKX is reasonable because Professionals would be assessed

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

a fee that is less favorable than a Customer but equivalent to all other market participants because it has been established that Professionals have access to more information than a Customer. It can be argued that Professionals have the same technological and informational advantages as broker-dealers trading for their own account. The Exchange believes that Professionals, who are considered sophisticated algorithmic traders, utilize the advantaged Customer pricing they receive to effectively compete with Market Makers and Broker-Dealers¹⁴ without the obligations of either. Also, the Exchange believes that unlike Customers, Professionals are able to shoulder the burden of fees as effectively as other market participants.

The Exchange's proposal to assess Professionals a \$.15 per contract Options Surcharge for transactions in RUT, MNX and NDX and a \$.10 per contract Options Surcharge for transactions in BKX is equitable and not unfairly discriminatory because all market participants, except for Customers, would be uniformly assessed the Options Surcharge fees for RUT, MNX, NDX and BKX, respectively. A lower Customer fee benefits all market participants by incentivizing market participants to transact a greater number of Customer orders, which results in increased liquidity. Additionally, today Professionals are assessed a higher fee as compared to Customers in both Penny Pilot Options¹⁵ and non-Penny Pilot Options.¹⁶

¹⁴ Broker-dealers pay registration and membership fees in self-regulatory organizations ("SRO") and incur costs to comply and assure that their associated persons comply with the Act and SRO rules.

¹⁵ 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),

The Exchange's proposal to continue to assess SOX, HGX and OSX the fees in Section III for Singly Listed Options is reasonable because the Exchange is seeking to continue to recoup the operation and development costs associated with these proprietary indexes.¹⁷

The Exchange believes that its proposal to continue to assess SOX, HGX and OSX the fees in Section III for Singly Listed Options is equitable and not unfairly discriminatory because all market participants would be assessed the Singly Listed Options Transaction Charges for transacting options on these indexes instead of the Options Transaction Charges in Section II.¹⁸ Specifically, all market participants would

(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.

¹⁶ Customers are not assessed an Options Transaction Charge for either Penny Pilot Options or non-Penny Pilot Options while Professionals are assessed \$.20 per contract for both Penny and non-Penny Pilot Options.

¹⁷ The Exchange continues to incur costs for maintaining these proprietary indexes including marketing expenses.

¹⁸ The Options Transaction Charges for non-Penny Multiply Listed Options are as follows: Customers pays \$.00 per contract, a Professional pays \$.20 per contract, a Market maker pays \$.23 per contract for electronic transactions and \$.25 per contract for non-electronic transactions, a Broker-Dealer pays \$.50 per contract for electronic transactions and \$.25 per contract for non-electronic transactions and a Firm pays \$.40 per contract for electronic transactions and \$.25 per contract for non-electronic transactions. See Section II of the Fee Schedule.

be assessed the higher fees in Section III, as compared to the fees in Section II, with the exception of a Broker-Dealer electronically transacting options on these indexes.¹⁹ The Exchange has previously stated that it incurs higher costs for Singly Listed Options as compared to Multiply Listed Options.²⁰ The Chicago Board Options Exchange, Incorporated (“CBOE”) noted in a comment letter dated June 21, 2010 that CBOE relies upon fees to, among other things, generate returns on its investments for its own popular proprietary products (such as The CBOE Volatility Index[®] (“VIX[®]”) Options).²¹ In addition, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory because the fees are consistent with price differentiation that exists today at all option exchanges. For example, CBOE assesses different rates for certain proprietary indexes as compared to other index products transacted at CBOE. VIX options and The S&P 500[®] Index options (“SPXSM”) are assessed different fees than other indexes.²²

The Exchange believes that its proposal to rename the “Fee Schedule” as the “Pricing Schedule” is reasonable, equitable and not unfairly discriminatory because the Exchange believes that the changing the title to “Pricing Schedule” more specifically

¹⁹ The Broker-Dealer non-Penny options transaction charge for a Multiply Listed Option is \$.50 per contract as compared to the Broker-Dealer fee of \$0.45 per contract for Singly Listed Options.

²⁰ See Securities Exchange Release Act No. 64096 (March 18, 2011), 76 FR 16646 (March 24, 2011) (SR-Phlx-2011-34).

²¹ See CBOE’s Comment Letter dated June 21, 2010 to the Proposed Amendments to Rule 610 of Regulation NMS, File No. S7-09-10. CBOE further noted that options exchanges expend considerable resources on research and development related to new product offerings and options exchanges incur large licensing costs for many products.

²² See CBOE’s Fees Schedule.

describes the fees, rebates and other charges reflected in the document termed “Fee Schedule.”

The Exchange operates in a highly competitive market, comprised of nine exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must 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,²³ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person,

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

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.

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2012-35)

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on March 16, 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: (i) Section II³ of the Fee Schedule entitled “Equity Options Fees” to assess Professionals an Options Surcharge in certain Multiply Listed Options; (ii) amend Section III⁴ of the Fee Schedule entitled “Singly Listed Options” to specify certain options that would be subject to the fees in this section; and (iii) amend the title of the Fee Schedule.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

⁴ Section III of the Fee Schedule includes options overlying equities, ETFs, ETNs, indexes and HOLDERS which are not listed on another exchange.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 2, 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.

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 of the Fee Schedule to assess Professionals an Options Surcharge for transactions in RUT,⁵ MNX,⁶ NDX⁷ and BKX.⁸ The Exchange believes that these surcharges will assist the Exchange in remaining

⁵ RUT represents the options on the Russell 2000® Index (the "Full Value Russell Index" or "RUT").

⁶ MNX represents options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX").

⁷ NDX represents options on the Nasdaq 100 Index⁷ traded under the symbol NDX ("NDX").

⁸ BKX represents the KBW Bank Index.

competitive in these options. The Exchange also proposes to amend Section III of the Fee Schedule to specify that the following options: PHLX Semiconductor SectorSM (SOXSM), PHLX Housing SectorTM (HGXSM) and PHLX Oil Service SectorSM (OSXSM) are subject to the Singly Listed Options Transaction Charge even though these options will no longer be Singly Listed. These above-referenced options are proprietary indexes. These options will be listed on the NASDAQ Options Market LLC (“NOM”) commencing on April 2, 2012. The Exchange seeks to continue to recoup fees associated with maintaining these proprietary indexes. The Exchange is also proposing to amend the title of the Fee Schedule to more specifically describe the document.

Section II Amendments

The Exchange currently assesses an Options Surcharge for transactions in RUT, MNX and NDX of \$.15 per contract for Market Makers,⁹ Broker-Dealers and Firms.¹⁰ The Exchange also currently assesses an Options Surcharge for transactions in BKX of \$.10 per contract for Market Makers, Broker-Dealers and Firms.¹¹ The Exchange is proposing to assess Professionals an Options Surcharge for transactions in RUT, MNX and NDX of \$.15 per contract and an Options Surcharge for transactions in BKX of \$.10 per contract. Customers will continue not to be assessed an Options Surcharge in RUT,

⁹ 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.

¹⁰ Currently, Professionals are not assessed an Options Surcharge for transactions in RUT, MNX or NDX.

¹¹ Currently, Professionals are not assessed an Options Surcharge for transactions in BKX.

MNX, NDX and BKK.

Section III Amendments

Currently, SOX, HGX and OSX are Singly Listed Options subject to the following fees in Section III of the Fee Schedule:

	Customer	Professional	Market Maker	Firm	Broker-Dealer
Options Transaction Charge	\$0.35	\$0.45	\$0.35	\$0.45	\$0.45

On April 2, 2012, NOM will list SOX, HGX and OSX and therefore these options will become Multiply Listed. The Exchange proposes to continue to assess SOX, HGX and OSX the Singly Listed Options Transaction Charges in Section III by specifying that these index options will be subject to Section III fees, even though they will no longer be Singly Listed. The Exchange also proposes to indicate in Section II of the Fee Schedule that SOX, HGX and OSX would be subject to the fees in Section III.

Other Amendments

The Exchange is also proposing to amend the title of the “Fee Schedule” to “Pricing Schedule” to more specifically describe this document.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) of

¹² 15 U.S.C. 78f(b).

the Act¹³ 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's proposal to assess Professionals a \$.15 per contract Options Surcharge for transactions in RUT, MNX and NDX and a \$.10 per contract Options Surcharge for transactions in BKX is reasonable because Professionals would be assessed a fee that is less favorable than a Customer but equivalent to all other market participants because it has been established that Professionals have access to more information than a Customer. It can be argued that Professionals have the same technological and informational advantages as broker-dealers trading for their own account. The Exchange believes that Professionals, who are considered sophisticated algorithmic traders, utilize the advantaged Customer pricing they receive to effectively compete with Market Makers and Broker-Dealers¹⁴ without the obligations of either. Also, the Exchange believes that unlike Customers, Professionals are able to shoulder the burden of fees as effectively as other market participants.

The Exchange's proposal to assess Professionals a \$.15 per contract Options Surcharge for transactions in RUT, MNX and NDX and a \$.10 per contract Options Surcharge for transactions in BKX is equitable and not unfairly discriminatory because all market participants, except for Customers, would be uniformly assessed the Options Surcharge fees for RUT, MNX, NDX and BKX, respectively. A lower Customer fee benefits all market participants by incentivizing market participants to transact a greater

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ Broker-dealers pay registration and membership fees in self-regulatory organizations ("SRO") and incur costs to comply and assure that their associated persons comply with the Act and SRO rules.

number of Customer orders, which results in increased liquidity. Additionally, today Professionals are assessed a higher fee as compared to Customers in both Penny Pilot Options¹⁵ and non-Penny Pilot Options.¹⁶

The Exchange's proposal to continue to assess SOX, HGX and OSX the fees in Section III for Singly Listed Options is reasonable because the Exchange is seeking to continue to recoup the operation and development costs associated with these proprietary indexes.¹⁷

The Exchange believes that its proposal to continue to assess SOX, HGX and OSX the fees in Section III for Singly Listed Options is equitable and not unfairly discriminatory because all market participants would be assessed the Singly Listed

¹⁵ 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.

¹⁶ Customers are not assessed an Options Transaction Charge for either Penny Pilot Options or non-Penny Pilot Options while Professionals are assessed \$.20 per contract for both Penny and non-Penny Pilot Options.

¹⁷ The Exchange continues to incur costs for maintaining these proprietary indexes including marketing expenses.

Options Transaction Charges for transacting options on these indexes instead of the Options Transaction Charges in Section II.¹⁸ Specifically, all market participants would be assessed the higher fees in Section III, as compared to the fees in Section II, with the exception of a Broker-Dealer electronically transacting options on these indexes.¹⁹ The Exchange has previously stated that it incurs higher costs for Singly Listed Options as compared to Multiply Listed Options.²⁰ The Chicago Board Options Exchange, Incorporated (“CBOE”) noted in a comment letter dated June 21, 2010 that CBOE relies upon fees to, among other things, generate returns on its investments for its own popular proprietary products (such as The CBOE Volatility Index[®] (“VIX[®]”) Options).²¹ In addition, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory because the fees are consistent with price differentiation that exists today at all option exchanges. For example, CBOE assesses different rates for certain proprietary indexes as compared to other index products transacted at CBOE.

¹⁸ The Options Transaction Charges for non-Penny Multiply Listed Options are as follows: Customers pays \$.00 per contract, a Professional pays \$.20 per contract, a Market maker pays \$.23 per contract for electronic transactions and \$.25 per contract for non-electronic transactions, a Broker-Dealer pays \$.50 per contract for electronic transactions and \$.25 per contract for non-electronic transactions and a Firm pays \$.40 per contract for electronic transactions and \$.25 per contract for non-electronic transactions. See Section II of the Fee Schedule.

¹⁹ The Broker-Dealer non-Penny options transaction charge for a Multiply Listed Option is \$.50 per contract as compared to the Broker-Dealer fee of \$0.45 per contract for Singly Listed Options.

²⁰ See Securities Exchange Release Act No. 64096 (March 18, 2011), 76 FR 16646 (March 24, 2011) (SR-Phlx-2011-34).

²¹ See CBOE’s Comment Letter dated June 21, 2010 to the Proposed Amendments to Rule 610 of Regulation NMS, File No. S7-09-10. CBOE further noted that options exchanges expend considerable resources on research and development related to new product offerings and options exchanges incur large licensing costs for many products.

VIX options and The S&P 500[®] Index options (“SPXSM”) are assessed different fees than other indexes.²²

The Exchange believes that its proposal to rename the “Fee Schedule” as the “Pricing Schedule” is reasonable, equitable and not unfairly discriminatory because the Exchange believes that the changing the title to “Pricing Schedule” more specifically describes the fees, rebates and other charges reflected in the document termed “Fee Schedule.”

The Exchange operates in a highly competitive market, comprised of nine exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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.

²² See CBOE's Fees Schedule.

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.²³ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2012-35 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.

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2012-35. 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-2012-35 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.²⁴

Kevin M O'Neill
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).

Exhibit 5

New text is underlined; deleted text is in brackets.

**NASDAQ OMX PHLX LLC
[FEE]PRICING SCHEDULE**

* * * * *

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

- These fees are per contract.

[∞] The following symbols will be assessed the fees in Section III for Singly Listed Options: SOX, HGX and OSX. * * * * *

III. Singly Listed Options (Includes options overlying currencies*, equities, ETFs, ETNs, indexes and HOLDRS not listed on another exchange[∞])

Singly Listed Options

	Customer	Professional	Market Maker	Firm	Broker-Dealer
Options Transaction Charge	\$0.35	\$0.45	\$0.35	\$0.45	\$0.45
Alpha and MSCI+ Index Options	\$0.10	\$0.25	\$0.15	\$0.25	\$0.25

- These fees are per contract.

*U.S. dollar-settled foreign currency options include XDB, XDE, XDN, XDS, XDA, XDM, XEH, XEV, XDZ, XDC and XDV.

[∞] The following symbols will be assessed the Singly Listed Options Transaction Charge: SOX, HGX and OSX.

+ Non-Customer executions in MSCI Index Options will be assessed a surcharge of \$0.05 per contract.

* * * * *