

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

Page 1 of \* 21

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

File No.\* SR - 2012 - \* 42

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 \*).

Routing 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

**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 03/28/2012

By Edward S. Knight  
(Name \*)Executive Vice President and 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.

Edward S Knight,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

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

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to amend certain Customer Routing Fees to recoup costs incurred by the Exchange in routing to away markets and also create a new category of Routing Fees entitled “Firm/Broker-Dealer/Market Maker” fees.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to the ISE Select Symbols Customer Routing Fee to be operative on April 2, 2012. In addition, the Exchange has designated the new category “Firm/Broker-Dealer/Market Maker” to be operative on the same date that SR-Phlx-2012-41 becomes operative.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of applicable portion of the Exchange’s Pricing Schedule is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on 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

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

<sup>2</sup> 17 CFR 240.19b-4.

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 purpose of this filing is to recoup costs that the Exchange incurs for routing and executing certain Customer orders in equity and index options to the International Securities Exchange, LLC (“ISE”) and also to recoup costs related to a new category of Routing Fees entitled “Firm/Broker-Dealer/Market Maker” fees. The Exchange’s Pricing Schedule at Section V, currently includes the following Routing Fees for routing Customer and Professional orders to away markets:

<b>Exchange</b>	<b>Customer</b>	<b>Professional</b>
NYSE AMEX	\$0.11	\$0.31
BATS	\$0.55	\$0.55
BOX	\$0.11	\$0.11
CBOE	\$0.11	\$0.31
CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs and HOLDRs	\$0.29	\$0.31
C2	\$0.55	\$0.56
ISE	\$0.11	\$0.29
ISE Select Symbols*	\$0.23	\$0.39
NYSE ARCA (Penny Pilot)	\$0.55	\$0.55
NYSE ARCA (Standard)	\$0.11	\$0.11
NOM	\$0.54	\$0.54
NOM (NDX and MNX)	\$0.56	\$0.56

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

The Exchange is proposing to amend the "ISE Select Symbols"<sup>3</sup> Customer Routing Fee from \$0.23 per contract to \$0.31 per contract. ISE recently amended its "taker" fee for regular, or non-complex, Priority Customer orders in the Select Symbols, regardless of size, from \$0.15 per contract to \$0.20 per contract.<sup>4</sup> In addition to the ISE taker fee, the Exchange also incurs other routing costs which it seeks to recoup.

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("NOS"), a member of the Exchange, as the Exchange's exclusive order router.<sup>5</sup> NOS is utilized by the Exchange's fully automated options trading system, PHLX XL<sup>®</sup>,<sup>6</sup> solely to route orders in options listed and open for trading on the PHLX XL system to destination markets. Each time NOS routes to away markets NOS is charged a \$0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The

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<sup>3</sup> See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

<sup>4</sup> See ISE's Schedule of Fees. See also Securities Exchange Act Release No. 66597 (March 14, 2012), 77 FR 16295 (March 20, 2012) (SR-ISE-2012-17).

<sup>5</sup> See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

<sup>6</sup> See SR-Phlx-2012-41. This proposal refers to "PHLX XL" as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL" for branding purposes.

Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at away markets, and technical costs associated with routing.<sup>7</sup> While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 2, 2012.

The Exchange is also proposing to create a new category of Routing Fees entitled “Firm/Broker-Dealer/Market Maker” fees. The Exchange recently filed a rule change to expand the routing capabilities of certain options orders that are eligible for electronic routing to other market centers by PHLX XL. Currently, Rule 1080(m) states that PHLX XL will route only Customer<sup>8</sup> FIND<sup>9</sup> and SRCH<sup>10</sup> orders to away markets. The rule change seeks to add non-customer FIND orders as a new category of orders that are

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<sup>7</sup> The Exchange is therefore increasing the ISE Select Symbols Customer Routing Fee to \$0.31 per contract to account for the \$0.20 ISE taker fee, the \$0.06 clearing cost and another \$0.05 per contract associated with administrative and technical costs associated with operating NOS.

<sup>8</sup> SR-Phlx-2012-41 defined the term “customer” as a person or entity that is neither a broker-dealer nor a direct or indirect affiliate of a broker-dealer. The rule filing specifically states that the term “customer” includes a “professional” as defined in Exchange Rule 1000(b)(14).

<sup>9</sup> A FIND order is currently defined as an order that is routable upon receipt. A FIND order received during open trading that is not marketable against the PHLX best Bid/Offer “PBBO” or the Away Best Bid/Offer (“ABBO”) will be entered into the limit order book at its limit price. The FIND order will not be eligible for routing until the next time the option series is subject to a new Opening Process. See Exchange Rule 1080(m)(iv)(B).

<sup>10</sup> A SRCH order is an order that is routable at any time. A SRCH order received during open trading that is not marketable against the PBBO or the ABBO will be entered into the Phlx XLII book. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market. See Exchange Rule 1080(m)(iv)(C).

eligible for routing.<sup>11</sup> This amendment to Exchange Rule 1080(m) would permit Firm, Broker-Dealer and Market Maker orders to be eligible for routing to other market centers when the Exchange cannot execute such orders at the National Best Bid or Offer (“NBBO”).<sup>12</sup>

Specifically, the Exchange proposes to amend Section V of the Pricing Schedule to add a new category “Firm/Broker-Dealer/Market Maker” to correspond to the non-customer FIND orders that would be eligible for Routing upon the effectiveness of SR-Phlx-2012-41 and its proposed amendments to Rule 1080(m). The Exchange proposes to assess a fixed Routing Fee of \$0.55 per contract applicable to all away markets. The Exchange has designated the new category “Firm/Broker-Dealer/Market Maker” to be operative on the same date that SR-Phlx-2012-41 becomes operative.

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section

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<sup>11</sup> See SR-Phlx-2012-41.

<sup>12</sup> Under the proposal, non-customer FIND orders would be treated in the same manner as customer FIND orders, except that non-customer FIND orders would not be eligible for routing during the Opening Process. The proposed Routing Fees would apply to all orders that are routed to an away market and would not apply to orders not eligible for routing.

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

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.

The Exchange believes that the proposed ISE Customer Routing Fee for Select Symbols is reasonable because it seeks to recoup costs that are incurred by the Exchange when routing certain Customer orders to ISE on behalf of its members. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange along with other administrative and technical costs that are incurred by the Exchange. The Exchange believes that the proposed Routing Fee would enable the Exchange to recover the customer taker fees assessed by ISE, plus clearing and other administrative and technical fees for the execution of Customer orders routed to ISE. The Exchange also believes that the proposed Routing Fee is equitable and not unfairly discriminatory because it would be uniformly applied to all Customer orders that are routed to ISE and part of ISE's Select Symbols.

The Exchange believes that the proposed new category of Routing Fee "Firm/Broker-Dealer/Market Maker" and the fixed \$0.55 per contract Routing Fee are reasonable because other options exchanges charge fees for non-Customer orders such as Firm, Broker-Dealer and Market Maker orders and these fees are consistently higher than fees for Customer orders.<sup>15</sup> The pricing on the various options exchanges for such orders varies significantly from exchange to exchange, with much more variation than for

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

<sup>15</sup> The NASDAQ Options Market LLC ("NOM") assesses a fixed Routing Fee to its Firms and Market Makers of \$0.55 per contract. See Chapter V, Section (2) of The NASDAQ Stock Market LLC's Rules. In addition, the Chicago Board Options Exchange Incorporated ("CBOE") assesses non-customer orders, including voluntary professionals and professionals, routing fees of \$0.50 per contract in addition to the customary CBOE execution charges. See CBOE's Fees Schedule.



Customer orders. Accordingly, the Exchange is proposing a \$0.55 per contract side Routing Fee in order to capture the majority of the transaction and clearing fees for Firm, Broker-Dealer and Market Maker orders, while making the Exchange's Routing Fees easier to calculate and predict for members whose proprietary orders are routed away. In addition, fixed Routing Fees are easier to comprehend by the members whose orders are routed away. There is no uncertainty and it is simpler for members acting as agent for other members to pass-through fees to its Customer. Currently, predicting, calculating and charging back "pass-through" fees is an unduly burdensome, expensive and complicated task for Exchange members whose orders are routed away. The fixed Routing Fees for Firm, Broker-Dealer and Market Maker orders should ease the burden, expense and complexity of this task. Furthermore, fixed fees are easier to manage and maintain for the Exchange, ensuring accurate billing and accounting. The Exchange believes that the proposed new category of Routing Fee "Firm/Broker-Dealer/Market Maker" and the fixed \$0.55 per contract Routing Fees are equitable and not unfairly discriminatory because the Exchange would assess all Firm, Broker-Dealer and Market Maker orders, eligible for routing to any away market, the same fee.<sup>16</sup>

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.

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<sup>16</sup> A market participant may mark an order "DNR" for do not route and therefore would not be subject to the fees noted herein. See Rules 1066(h) and 1080(m).

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>17</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 Pricing Schedule.

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2012-42)

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 28, 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 certain Customer Routing Fees to recoup costs incurred by the Exchange in routing to away markets and also create a new category of Routing Fees entitled "Firm/Broker-Dealer/Market Maker" fees.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to the ISE Select Symbols Customer Routing Fee to be operative on April 2, 2012. In addition, the Exchange has designated the new category "Firm/Broker-Dealer/Market Maker" to be operative on the same date that SR-Phlx-2012-41 becomes operative.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this filing is to recoup costs that the Exchange incurs for routing and executing certain Customer orders in equity and index options to the International Securities Exchange, LLC ("ISE") and also to recoup costs related to a new category of Routing Fees entitled "Firm/Broker-Dealer/Market Maker" fees. The Exchange's Pricing Schedule at Section V, currently includes the following Routing Fees for routing Customer and Professional orders to away markets:

<b>Exchange</b>	<b>Customer</b>	<b>Professional</b>
NYSE AMEX	\$0.11	\$0.31
BATS	\$0.55	\$0.55
BOX	\$0.11	\$0.11
CBOE	\$0.11	\$0.31
CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs	\$0.29	\$0.31

and HOLDRs		
C2	\$0.55	\$0.56
ISE	\$0.11	\$0.29
ISE Select Symbols*	\$0.23	\$0.39
NYSE ARCA (Penny Pilot)	\$0.55	\$0.55
NYSE ARCA (Standard)	\$0.11	\$0.11
NOM	\$0.54	\$0.54
NOM (NDX and MNX)	\$0.56	\$0.56

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

The Exchange is proposing to amend the "ISE Select Symbols"<sup>3</sup> Customer Routing Fee from \$0.23 per contract to \$0.31 per contract. ISE recently amended its "taker" fee for regular, or non-complex, Priority Customer orders in the Select Symbols, regardless of size, from \$0.15 per contract to \$0.20 per contract.<sup>4</sup> In addition to the ISE taker fee, the Exchange also incurs other routing costs which it seeks to recoup.

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("NOS"), a member of the Exchange, as the Exchange's exclusive order router.<sup>5</sup> NOS is utilized by the Exchange's fully automated options trading system,

<sup>3</sup> See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

<sup>4</sup> See ISE's Schedule of Fees. See also Securities Exchange Act Release No. 66597 (March 14, 2012), 77 FR 16295 (March 20, 2012) (SR-ISE-2012-17).

<sup>5</sup> See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

PHLX XL<sup>®</sup>,<sup>6</sup> solely to route orders in options listed and open for trading on the PHLX XL system to destination markets. Each time NOS routes to away markets NOS is charged a \$0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at away markets, and technical costs associated with routing.<sup>7</sup> While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 2, 2012.

The Exchange is also proposing to create a new category of Routing Fees entitled “Firm/Broker-Dealer/Market Maker” fees. The Exchange recently filed a rule change to expand the routing capabilities of certain options orders that are eligible for electronic routing to other market centers by PHLX XL. Currently, Rule 1080(m) states that PHLX XL will route only Customer<sup>8</sup> FIND<sup>9</sup> and SRCH<sup>10</sup> orders to away markets. The rule

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<sup>6</sup> See SR-Phlx-2012-41. This proposal refers to “PHLX XL” as the Exchange’s automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as “Phlx XL II.” See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from “Phlx XL II” to “PHLX XL” for branding purposes.

<sup>7</sup> The Exchange is therefore increasing the ISE Select Symbols Customer Routing Fee to \$0.31 per contract to account for the \$0.20 ISE taker fee, the \$0.06 clearing cost and another \$0.05 per contract associated with administrative and technical costs associated with operating NOS.

<sup>8</sup> SR-Phlx-2012-41 defined the term “customer” as a person or entity that is neither a broker-dealer nor a direct or indirect affiliate of a broker-dealer. The rule filing

change seeks to add non-customer FIND orders as a new category of orders that are eligible for routing.<sup>11</sup> This amendment to Exchange Rule 1080(m) would permit Firm, Broker-Dealer and Market Maker orders to be eligible for routing to other market centers when the Exchange cannot execute such orders at the National Best Bid or Offer (“NBBO”).<sup>12</sup>

Specifically, the Exchange proposes to amend Section V of the Pricing Schedule to add a new category “Firm/Broker-Dealer/Market Maker” to correspond to the non-customer FIND orders that would be eligible for Routing upon the effectiveness of SR-Phlx-2012-41 and its proposed amendments to Rule 1080(m). The Exchange proposes to assess a fixed Routing Fee of \$0.55 per contract applicable to all away markets. The Exchange has designated the new category “Firm/Broker-Dealer/Market Maker” to be operative on the same date that SR-Phlx-2012-41 becomes operative.

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specifically states that the term “customer” includes a “professional” as defined in Exchange Rule 1000(b)(14).

<sup>9</sup> A FIND order is currently defined as an order that is routable upon receipt. A FIND order received during open trading that is not marketable against the PHLX best Bid/Offer “PBBO” or the Away Best Bid/Offer (“ABBO”) will be entered into the limit order book at its limit price. The FIND order will not be eligible for routing until the next time the option series is subject to a new Opening Process. See Exchange Rule 1080(m)(iv)(B).

<sup>10</sup> A SRCH order is an order that is routable at any time. A SRCH order received during open trading that is not marketable against the PBBO or the ABBO will be entered into the Phlx XLII book. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market. See Exchange Rule 1080(m)(iv)(C).

<sup>11</sup> See SR-Phlx-2012-41.

<sup>12</sup> Under the proposal, non-customer FIND orders would be treated in the same manner as customer FIND orders, except that non-customer FIND orders would not be eligible for routing during the Opening Process. The proposed Routing Fees would apply to all orders that are routed to an away market and would not apply to orders not eligible for routing.

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing 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.

The Exchange believes that the proposed ISE Customer Routing Fee for Select Symbols is reasonable because it seeks to recoup costs that are incurred by the Exchange when routing certain Customer orders to ISE on behalf of its members. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange along with other administrative and technical costs that are incurred by the Exchange. The Exchange believes that the proposed Routing Fee would enable the Exchange to recover the customer taker fees assessed by ISE, plus clearing and other administrative and technical fees for the execution of Customer orders routed to ISE. The Exchange also believes that the proposed Routing Fee is equitable and not unfairly discriminatory because it would be uniformly applied to all Customer orders that are routed to ISE and part of ISE's Select Symbols.

The Exchange believes that the proposed new category of Routing Fee "Firm/Broker-Dealer/Market Maker" and the fixed \$0.55 per contract Routing Fee are reasonable because other options exchanges charge fees for non-Customer orders such as

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

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



Firm, Broker-Dealer and Market Maker orders and these fees are consistently higher than fees for Customer orders.<sup>15</sup> The pricing on the various options exchanges for such orders varies significantly from exchange to exchange, with much more variation than for Customer orders. Accordingly, the Exchange is proposing a \$0.55 per contract side Routing Fee in order to capture the majority of the transaction and clearing fees for Firm, Broker-Dealer and Market Maker orders, while making the Exchange's Routing Fees easier to calculate and predict for members whose proprietary orders are routed away. In addition, fixed Routing Fees are easier to comprehend by the members whose orders are routed away. There is no uncertainty and it is simpler for members acting as agent for other members to pass-through fees to its Customer. Currently, predicting, calculating and charging back "pass-through" fees is an unduly burdensome, expensive and complicated task for Exchange members whose orders are routed away. The fixed Routing Fees for Firm, Broker-Dealer and Market Maker orders should ease the burden, expense and complexity of this task. Furthermore, fixed fees are easier to manage and maintain for the Exchange, ensuring accurate billing and accounting. The Exchange believes that the proposed new category of Routing Fee "Firm/Broker-Dealer/Market Maker" and the fixed \$0.55 per contract Routing Fees are equitable and not unfairly discriminatory because the Exchange would assess all Firm, Broker-Dealer and Market

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<sup>15</sup> The NASDAQ Options Market LLC ("NOM") assesses a fixed Routing Fee to its Firms and Market Makers of \$0.55 per contract. See Chapter V, Section (2) of The NASDAQ Stock Market LLC's Rules. In addition, the Chicago Board Options Exchange Incorporated ("CBOE") assesses non-customer orders, including voluntary professionals and professionals, routing fees of \$0.50 per contract in addition to the customary CBOE execution charges. See CBOE's Fees Schedule.

Maker orders, eligible for routing to any away market, the same fee.<sup>16</sup>

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>17</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:

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<sup>16</sup> A market participant may mark an order "DNR" for do not route and therefore would not be subject to the fees noted herein. See Rules 1066(h) and 1080(m).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-42 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-2012-42. 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-2012-42 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>18</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

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

**NASDAQ OMX PHLX LLC  
PRICING SCHEDULE**

\* \* \* \* \*

**V. Routing Fees**

<b>Exchange</b>	<b>Customer</b>	<b>Professional</b>	<b><u>Firm/Broker-Dealer/Market Maker</u></b>
NYSE AMEX	\$0.11	\$0.31	<u>\$0.55</u>
BATS	\$0.55	\$0.55	<u>\$0.55</u>
BOX	\$0.11	\$0.11	<u>\$0.55</u>
CBOE	\$0.11	\$0.31	<u>\$0.55</u>
CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs and HOLDRs	\$0.29	\$0.31	<u>\$0.55</u>
C2	\$0.55	\$0.56	<u>\$0.55</u>
ISE	\$0.11	\$0.29	<u>\$0.55</u>
ISE Select Symbols*	\$0.[23]31	\$0.39	<u>\$0.55</u>
NYSE ARCA (Penny Pilot)	\$0.55	\$0.55	<u>\$0.55</u>
NYSE ARCA (Standard)	\$0.11	\$0.11	<u>\$0.55</u>
NOM	\$0.54	\$0.54	<u>\$0.55</u>
NOM (NDX and MNX)	\$0.56	\$0.56	<u>\$0.55</u>

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

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