

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 39	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2012 - * 61	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"/>	
			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 <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b> Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).				
Rebates and Fees for Adding and Removing Liquidity in Select Symbols and Equity Options Fees				
<b>Contact Information</b> Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.				
First Name *	Angela	Last Name *	Dunn	
Title *	Associate General Counsel			
E-mail *	angela.dunn@nasdaqomx.com			
Telephone *	(215) 496-5692	Fax		
<b>Signature</b> Pursuant to the requirements of the Securities Exchange Act of 1934,  has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.				
Date	05/01/2012			
By	Edward S. Knight	Executive Vice President and General Counsel		
	(Name *)	(Title *)		
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.		Edward S Knight,		

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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

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

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

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

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Exhibit Sent As Paper Document

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to amend Section I, entitled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols” and Section II, entitled “Equity Options Fees”<sup>3</sup> to amend various fees and rebates within those sections.

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 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 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.

<sup>3</sup> Equity options fees include options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed, except SOX, HGX and OSX.

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

a. Purpose

The Exchange proposes changes to Sections I and II of the Exchange's Pricing Schedule to: (1) amend the Monthly Firm Fee Cap; (2) eliminate a Service Fee applicable to Firms who have reached the Monthly Firm Fee Cap; and (2) amend Qualified Contingent Cross fees and rebates. The Exchange also proposes to amend Section II to: (1) adopt a fee reduction for Firm electronic orders in Penny and non-Penny Pilot Options;<sup>4</sup> and (2) amend the Customer rebate paid for certain electronically-delivered Customer orders. The Exchange believes that the amendments described above would incentivize Firms to transact a greater number of orders at the Exchange by eliminating the Service Fee applicable to Firms, reducing the QCC Service Fee and providing an opportunity to reduce Section II fees in lieu of the elimination of electronic orders from the Monthly Firm Fee Cap. The Exchange believes that the amended rebates applicable

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<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.

to QCC Orders would continue to incentivize members to transact QCC Orders. Finally, the Exchange is amending the Customer rebates on certain Penny Pilot and non-Penny Pilot Orders to attract additional Customer order flow, which should benefit all market participants.

#### Monthly Firm Fee Cap and Service Fee

Currently, 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,<sup>5</sup> merger<sup>6</sup> or short stock interest strategy<sup>7</sup> and executions subject to the Reversal and Conversion Cap<sup>8</sup> are excluded from the Monthly Firm Fee Cap.<sup>9</sup> The Firm equity

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<sup>5</sup> 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. See Section II of the Pricing Schedule.

<sup>6</sup> 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. See Section II of the Pricing Schedule.

<sup>7</sup> 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. See Section II of the Pricing Schedule.

<sup>8</sup> Market Maker, Professional, Firm and Broker-Dealer equity options transaction fees are capped at \$1,000 per day for reversal and conversion strategies executed on the same trading day in the same options class.

<sup>9</sup> The Monthly Firm Fee Cap is applicable to both Sections I and II of the Pricing Schedule.

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 (including FLEX and Cabinet equity options transaction fees).<sup>10</sup> QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

The Exchange proposes to amend the Monthly Firm Fee Cap to exclude electronic orders. In other words, only Firm non-electronic equity option transaction fees and QCC Transaction Fees (electronic and non-electronic) 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. The exclusions and waivers currently noted in the Pricing Schedule related to the Monthly Firm Fee Cap would remain without change.

Additionally, the Exchange currently assesses Firms that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Firm Fee Cap a \$0.07 per contract fee, excluding PIXL Orders.<sup>11</sup> The Exchange proposes to eliminate this \$0.07 per contract Service Fee as applicable to the Monthly Firm Fee Cap.

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<sup>10</sup> Member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account.

<sup>11</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).

### Qualified Contingent Cross Orders

Currently, the Exchange assesses Market Makers,<sup>12</sup> Professionals,<sup>13</sup> Firms and Broker-Dealers a QCC Transaction Fee of \$0.20 per contract. QCC Transaction Fees apply to both electronic QCC Orders (“eQCC”)<sup>14</sup> and Floor QCC Orders<sup>15</sup> (collectively “QCC Orders”). Today, the Exchange offers a rebate of \$0.07 per contract on all qualifying executed QCC orders up to 1,000,000 contracts in a month, 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. If a member

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<sup>12</sup> A “Market Maker” includes Specialists (see Rule 1020) and Registered Options Traders (“ROT”) (Rule 1014(b)(i) and (ii), which includes Streaming Quote Traders (“SQT”) (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (“RSQT”) (see Rule 1014(b)(ii)(B). Directed Participants are also Market Makers.

<sup>13</sup> The term “professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

<sup>14</sup> A QCC Order is comprised of an order to buy or sell at least 1000 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).

<sup>15</sup> 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).

exceeds 1,000,000 contracts in a month of qualifying executed QCC Orders, a \$0.11 rebate is 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.

The Exchange proposes to amend the current QCC Order rebates of \$0.07 per contract and \$0.11 per contract by eliminating those rebates and replacing those rebates with a tiered rebate schedule as follows:

<b>Threshold</b>	<b>Rebate per Contract</b>
0 to 199,999 contracts in a month	\$0.00
200,000 to 499,999 contracts in a month	\$0.01
500,000 to 699,999 contracts in a month	\$0.05
700,000 to 999,999 contracts in a month	\$0.07
Over 1,000,000 contracts in a month	\$0.11

The exclusions noted in the Pricing Schedule applicable to QCC rebates would continue to apply.

Additionally, the Exchange proposes to amend the current QCC Service Fee applicable to the Monthly Firm Fee Cap. Currently, a Service Fee of \$0.07 per side is assessed once a Firm has reached the Monthly Market Maker Cap. This \$0.07 Service Fee 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, as defined in Exchange Rule 1080(o) and Floor QCC Order, as defined in Exchange Rule 1064(e), after a Firm has reached the Monthly Firm Fee Cap.<sup>16</sup> The Exchange proposes to decrease this Service Fee from \$0.07 per side to \$0.01 per side.

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<sup>16</sup> The Service Fee is not assessed to a Firm that does not reach the Monthly Firm Fee Cap in a particular calendar month.

Firm Electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options

The Exchange proposes to decrease the Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options by reducing the applicable Options Transactions Charges to \$.11 per contract if a Firm executed greater than 750,000 electronically-delivered contracts a month in Penny Pilot or non-Penny Pilot Options, excluding Select Symbols. Currently Firms are assessed an electronic Options Transaction Charge for Penny Pilot options of \$.25 per contract and an electronic Options Transaction Charge for non-Penny Pilot options of \$.40 per contract. For example, if a Firm transacted greater than 750,000 contracts a month in Penny Pilot or non-Penny Pilot Options, than the Firm would be assessed an Options Transaction Charge of \$.11 per contract for all Penny Pilot and non-Penny Pilot Options in that given month.

Customer Rebate

The Exchange proposes to amend the applicability of a Customer rebate which is offered today for members executing electronically-delivered Customer orders in Section II of the Pricing Schedule. Currently when a member transacts an average daily volume of 50,000 Customer contracts or greater in a given month the member is entitled to a rebate of \$0.07 per contract. If the member qualified for the \$0.07 rebate and added liquidity in a non-Penny Pilot Option the member would be eligible for an additional \$0.03 per contract rebate for all qualifying Customer orders in a given month.<sup>17</sup>

The Exchange proposes to continue to offer a rebate of \$.07 per contract for members executing electronically-delivered Customer orders when a member transacts

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<sup>17</sup> PIXL Orders and QCC Orders are not eligible for the rebate and are excluded from the calculation of the average daily volume.

an average daily volume of 50,000 Customer contracts or greater in a given month. The Exchange is proposing to amend the applicability of the additional rebate of \$0.03 per contract. The Exchange proposes to pay the additional rebate of \$0.03 per contract to members for those electronically-delivered Customer orders that qualified for the \$0.07 rebate; and added liquidity in a Simple order in a non-Penny Pilot Option or added or removed liquidity, including auctions, in a Complex Order in a Penny Pilot Option.<sup>18</sup>

### Conforming Amendments

The Exchange also proposes to amend the Pricing Schedule at Section I to amend text related to the Monthly Firm Fee Cap to correspond to the amended language in Section II by qualifying that the Monthly Firm Fee Cap will apply to non-electronic equity option transactions for Section I and Section II symbols as well as QCC electronic and non-electronic transactions. The Exchange is proposing to delete repetitive text in Section II and simply state that the QCC Transaction fees and rebates, defined in Section II, are applicable to Section I.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is

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<sup>18</sup> Section II rebates and fees apply to both Simple and Complex Orders. 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 exchange-traded fund (“ETF”) coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

consistent with Section 6(b) of the Act<sup>19</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>20</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.

#### Monthly Firm Fee Cap, Firm Volume Discount and Service Fees

The Exchange believes that the proposal to amend the Monthly Firm Fee Cap to exclude electronic equity option transactions is reasonable because the Exchange seeks to incentivize Firms in other ways that it believes would encourage Firms to transact more volume on the Exchange. In lieu of offering Firms a cap on electronic equity option transaction fees the Exchange is seeking to remain competitive with other options exchanges by amending the application of the Monthly Firm Fee Cap and reducing the QCC Service Fee<sup>21</sup> from \$0.07 to \$0.01 per side. The Exchange desires to continue to incentivize Firms to transact electronic orders, by providing Firms with an opportunity to pay lower fees in Section II of the Pricing Schedule by offering a reduction of Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options, provided the Firm has volume greater than 750,000 electronically-delivered contracts in a month.

The Exchange believes that it is equitable and not unfairly discriminatory to offer lower transaction fees in Section II of the Pricing Schedule, in lieu of a cap on electronic equity option transactions, and to continue to offer the cap for non-electronic

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<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(4).

<sup>21</sup> The QCC Service Fee is applicable once the Firm has reached the Monthly Firm Fee Cap.

transactions, including electronic and non-electronic QCC Transactions. Firms will continue to be rewarded in terms of a cap on non-electronic equity option transactions and QCC Transactions, which represents the majority of Firm executions and would be able to achieve potentially greater per contract discounts from the proposed incentive offered for equity option transactions in Section II. Further, the Exchange believes that it is equitable and not unfairly discriminatory to exclude Firm electronic equity option transactions from the Monthly Firm Fee Cap, because a Firm transacting electronic orders would still be able to include electronic (and non-electronic) QCC transactions in the Monthly Firm Fee Cap and would also have the opportunity to reduce Section II Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options if the Firm achieved a certain volume in a month.

The Exchange believes that its proposal to reduce the QCC Service Fee applicable to the Monthly Firm Fee Cap, once a Firm has reached the Monthly Firm Fee Cap, from \$0.07 per side to \$0.01 per contract side is reasonable because the Exchange will no longer apply the Monthly Firm Fee Cap as broadly, including both electronic and non-electronic equity option orders, but rather will only apply the Cap to non-electronic equity option transactions and QCC Transactions. The Exchange does not believe it is necessary to assess a \$0.07 per side Service Fee on QCC Transactions at this time to recoup costs, but instead believes it is reasonable to assess Firms a \$0.01 per contract QCC Service Fee, once Firms have reach the Monthly Firm Fee Cap, in order to recoup costs. This fee is comparable to the QCC Service Fee assessed by the International Securities Exchange, LLC (“ISE”).<sup>22</sup>

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<sup>22</sup> See ISE’s Fee Schedule.

Further, the Exchange believes that its proposal to reduce the QCC Service Fee applicable to the Monthly Firm Fee Cap from \$0.07 per side to \$0.01 per contract side, once a Firm has reached the Monthly Firm Fee Cap, is equitable and not unfairly discriminatory because the reduction will be uniformly applied to all Firms transacting QCC Orders and exceeding the Monthly Firm Fee Cap. The QCC Service Fee of \$0.01 per side is proposed to recoup costs incurred by the Exchange to offer this capability including trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange.

The Exchange believes that reducing the QCC Service Fee applicable to the Monthly Firm Fee Cap from \$0.07 per side to \$0.01 per side, once the Firm has reached the Monthly Firm fee Cap is equitable and not unfairly discriminatory when compared to the Monthly Market Maker Cap because the Monthly Market Maker Cap is applicable to all equity options transaction fees and QCC Transaction Fees while the Monthly Firm Fee Cap would apply to non-electronic equity option transaction fees and QCC Transaction Fees. The corresponding reduction to the QCC Service Fee is related to the proposed amendment which would not include electronic equity option transaction fees in the Monthly Firm Fee Cap.

Additionally, the Exchange is eliminating the \$0.07 Service Fee for Firms that are on the contra-side of an electronically-delivered and executed Customer order. The Exchange believes that its proposal to eliminate the \$0.07 Service Fee for Firms that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Firm Fee Cap is reasonable because the Exchange is amending the applicability of the Monthly Firm Fee Cap to apply to non-electronic transactions and

QCC Transactions, excluding electronic equity option transactions. The Exchange believes that its proposal to eliminate the \$0.07 Service Fee for Firms that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Firm Fee Cap is equitable and not unfairly discriminatory because it will be uniformly applied to all participants that qualify for the Service Fee. Further, the elimination of the Service Fee is related to the proposed amendment to exclude electronic equity option transaction fees from the Monthly Firm Fee Cap. The Exchange believes that eliminating the Service Fee is consistent with the proposed amendment to the Monthly Firm Fee Cap and its applicability to electronically-delivered orders.

#### Qualified Contingent Cross Orders Rebate Program

The Exchange believes that its proposal to amend the current rebates applicable to QCC Orders by replacing the current \$0.07 rebate for all qualifying executed QCC Orders up to 1,000,000 contracts in a month with certain exceptions or the \$0.11 per contract rebate for all qualifying executed QCC Orders over 1,000,000 with a tiered rebate schedule for QCC Orders is reasonable because the Exchange believes that the tiered schedule would continue to incentivize members. Also, the rebate structure for QCC Orders is similar to rebates at ISE.<sup>23</sup>

The Exchange believes that its proposal to amend the current rebates applicable to QCC Orders by replacing the current \$0.07 rebate for all qualifying executed QCC Orders up to 1,000,000 contracts in a month with certain exceptions or the \$0.11 per contract rebate for all qualifying executed QCC Orders over 1,000,000 with a tiered

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<sup>23</sup> See ISE's Fee Schedule.

rebate schedule for QCC Orders is equitable and not unfairly discriminatory because all market participants transacting QCC Orders would be subject to the same rebate schedule.

### Customer Rebate

The Exchange's proposal to amend the applicability of the Section II Customer rebate of \$0.03 for all orders in that month if the member qualified for the \$0.07 rebate and also added liquidity in a Simple non-Penny Pilot Option or added or removed liquidity in a Complex Order Penny Pilot Option (including auctions) is reasonable because this proposed amendment broadens the types of Customer orders that are potentially eligible for the increased rebate and encourages members to transact a greater number of Customer orders, which Customer order flow benefits all market participants. Specifically, creating incentives and attracting Customer orders to the Exchange benefits all market participants through increased liquidity at the Exchange.

The Exchange's proposal to amend the applicability of the Section II Customer rebate of \$0.07 for all orders in that month if the member qualified for the \$0.03 rebate and also added liquidity in a Simple non-Penny Pilot Option or added or removed liquidity in a Complex Order Penny Pilot Option (including auctions) is equitable and not unfairly discriminatory because the rebates would uniformly apply to all Customer transactions that meet the criteria for the rebate. Further, all market participants may equally qualify for the rebate.

### Conforming Amendments

The Exchange's proposal to conform the text of Section I of the Pricing Schedule to reflect amendments to text in Section II of the Pricing Schedule is reasonable, equitable and not unfairly discriminatory because the amended text would clearly indicate what types of fees are included in the Monthly Firm Fee Cap and the applicability of the QCC Transaction fees and rebates. The Exchange believes that the proposed text clarifies the text of the Pricing 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 and rebate levels at a particular venue to be excessive. Accordingly, the fees that are assessed and the rebates paid by the Exchange must remain competitive with fees charged and rebates paid 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,<sup>24</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>24</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2012-61)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Rebates and Fees for Adding and Removing Liquidity in Select Symbols and 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 May 1, 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 I, entitled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols" and Section II, entitled "Equity Options Fees"<sup>3</sup> to amend various fees and rebates within those sections.

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

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

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

<sup>3</sup> Equity options fees include options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed, except SOX, HGX and OSX.

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 changes to Sections I and II of the Exchange's Pricing Schedule to: (1) amend the Monthly Firm Fee Cap; (2) eliminate a Service Fee applicable to Firms who have reached the Monthly Firm Fee Cap; and (2) amend Qualified Contingent Cross fees and rebates. The Exchange also proposes to amend Section II to: (1) adopt a fee reduction for Firm electronic orders in Penny and non-Penny Pilot Options;<sup>4</sup> and (2) amend the Customer rebate paid for certain electronically-delivered

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<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

Customer orders. The Exchange believes that the amendments described above would incentivize Firms to transact a greater number of orders at the Exchange by eliminating the Service Fee applicable to Firms, reducing the QCC Service Fee and providing an opportunity to reduce Section II fees in lieu of the elimination of electronic orders from the Monthly Firm Fee Cap. The Exchange believes that the amended rebates applicable to QCC Orders would continue to incentivize members to transact QCC Orders. Finally, the Exchange is amending the Customer rebates on certain Penny Pilot and non-Penny Pilot Orders to attract additional Customer order flow, which should benefit all market participants.

#### Monthly Firm Fee Cap and Service Fee

Currently, 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,<sup>5</sup> merger<sup>6</sup> or short stock interest strategy<sup>7</sup> and executions subject to the Reversal

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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> 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. See Section II of the Pricing Schedule.

<sup>6</sup> 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. See Section II of the Pricing Schedule.

and Conversion Cap<sup>8</sup> are excluded from the Monthly Firm Fee Cap.<sup>9</sup> 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 (including FLEX and Cabinet equity options transaction fees).<sup>10</sup> QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

The Exchange proposes to amend the Monthly Firm Fee Cap to exclude electronic orders. In other words, only Firm non-electronic equity option transaction fees and QCC Transaction Fees (electronic and non-electronic) 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. The exclusions and waivers currently noted in the Pricing Schedule related to the Monthly Firm Fee Cap would remain without change.

Additionally, the Exchange currently assesses Firms that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Firm Fee Cap a \$0.07 per contract fee, excluding PIXL Orders.<sup>11</sup> The Exchange

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<sup>7</sup> 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. See Section II of the Pricing Schedule.

<sup>8</sup> Market Maker, Professional, Firm and Broker-Dealer equity options transaction fees are capped at \$1,000 per day for reversal and conversion strategies executed on the same trading day in the same options class.

<sup>9</sup> The Monthly Firm Fee Cap is applicable to both Sections I and II of the Pricing Schedule.

<sup>10</sup> Member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account.

<sup>11</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

proposes to eliminate this \$0.07 per contract Service Fee as applicable to the Monthly Firm Fee Cap.

### Qualified Contingent Cross Orders

Currently, the Exchange assesses Market Makers,<sup>12</sup> Professionals,<sup>13</sup> Firms and Broker-Dealers a QCC Transaction Fee of \$0.20 per contract. QCC Transaction Fees apply to both electronic QCC Orders (“eQCC”)<sup>14</sup> and Floor QCC Orders<sup>15</sup> (collectively

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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>12</sup> A “Market Maker” includes Specialists (see Rule 1020) and Registered Options Traders (“ROT”) (Rule 1014(b)(i) and (ii), which includes Streaming Quote Traders (“SQT”) (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (“RSQT”) (see Rule 1014(b)(ii)(B). Directed Participants are also Market Makers.

<sup>13</sup> The term "professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

<sup>14</sup> A QCC Order is comprised of an order to buy or sell at least 1000 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 (“QCT”) that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of Regulation NMS).

<sup>15</sup> 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

“QCC Orders”). Today, the Exchange offers a rebate of \$0.07 per contract on all qualifying executed QCC orders up to 1,000,000 contracts in a month, 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. If a member exceeds 1,000,000 contracts in a month of qualifying executed QCC Orders, a \$0.11 rebate is 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.

The Exchange proposes to amend the current QCC Order rebates of \$0.07 per contract and \$0.11 per contract by eliminating those rebates and replacing those rebates with a tiered rebate schedule as follows:

<b>Threshold</b>	<b>Rebate per Contract</b>
0 to 199,999 contracts in a month	\$0.00
200,000 to 499,999 contracts in a month	\$0.01
500,000 to 699,999 contracts in a month	\$0.05
700,000 to 999,999 contracts in a month	\$0.07
Over 1,000,000 contracts in a month	\$0.11

The exclusions noted in the Pricing Schedule applicable to QCC rebates would continue to apply.

Additionally, the Exchange proposes to amend the current QCC Service Fee applicable to the Monthly Firm Fee Cap. Currently, a Service Fee of \$0.07 per side is assessed once a Firm has reached the Monthly Market Maker Cap. This \$0.07 Service Fee 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, as defined in Exchange Rule

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

1080(o) and Floor QCC Order, as defined in Exchange Rule 1064(e), after a Firm has reached the Monthly Firm Fee Cap.<sup>16</sup> The Exchange proposes to decrease this Service Fee from \$0.07 per side to \$0.01 per side.

#### Firm Electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options

The Exchange proposes to decrease the Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options by reducing the applicable Options Transactions Charges to \$.11 per contract if a Firm executed greater than 750,000 electronically-delivered contracts a month in Penny Pilot or non-Penny Pilot Options, excluding Select Symbols. Currently Firms are assessed an electronic Options Transaction Charge for Penny Pilot options of \$.25 per contract and an electronic Options Transaction Charge for non-Penny Pilot options of \$.40 per contract. For example, if a Firm transacted greater than 750,000 contracts a month in Penny Pilot or non-Penny Pilot Options, than the Firm would be assessed an Options Transaction Charge of \$.11 per contract for all Penny Pilot and non-Penny Pilot Options in that given month.

#### Customer Rebate

The Exchange proposes to amend the applicability of a Customer rebate which is offered today for members executing electronically-delivered Customer orders in Section II of the Pricing Schedule. Currently when a member transacts an average daily volume of 50,000 Customer contracts or greater in a given month the member is entitled to a rebate of \$0.07 per contract. If the member qualified for the \$0.07 rebate and added

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<sup>16</sup> The Service Fee is not assessed to a Firm that does not reach the Monthly Firm Fee Cap in a particular calendar month.

liquidity in a non-Penny Pilot Option the member would be eligible for an additional \$0.03 per contract rebate for all qualifying Customer orders in a given month.<sup>17</sup>

The Exchange proposes to continue to offer a rebate of \$.07 per contract for members executing electronically-delivered Customer orders when a member transacts an average daily volume of 50,000 Customer contracts or greater in a given month. The Exchange is proposing to amend the applicability of the additional rebate of \$0.03 per contract. The Exchange proposes to pay the additional rebate of \$0.03 per contract to members for those electronically-delivered Customer orders that qualified for the \$0.07 rebate; and added liquidity in a Simple order in a non-Penny Pilot Option or added or removed liquidity, including auctions, in a Complex Order in a Penny Pilot Option.<sup>18</sup>

#### Conforming Amendments

The Exchange also proposes to amend the Pricing Schedule at Section I to amend text related to the Monthly Firm Fee Cap to correspond to the amended language in Section II by qualifying that the Monthly Firm Fee Cap will apply to non-electronic equity option transactions for Section I and Section II symbols as well as QCC electronic and non-electronic transactions. The Exchange is proposing to delete repetitive text in

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<sup>17</sup> PIXL Orders and QCC Orders are not eligible for the rebate and are excluded from the calculation of the average daily volume.

<sup>18</sup> Section II rebates and fees apply to both Simple and Complex Orders. 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 exchange-traded fund (“ETF”) coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

Section II and simply state that the QCC Transaction fees and rebates, defined in Section II, are applicable to Section I.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>19</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>20</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.

Monthly Firm Fee Cap, Firm Volume Discount and Service Fees

The Exchange believes that the proposal to amend the Monthly Firm Fee Cap to exclude electronic equity option transactions is reasonable because the Exchange seeks to incentivize Firms in other ways that it believes would encourage Firms to transact more volume on the Exchange. In lieu of offering Firms a cap on electronic equity option transaction fees the Exchange is seeking to remain competitive with other options exchanges by amending the application of the Monthly Firm Fee Cap and reducing the QCC Service Fee<sup>21</sup> from \$0.07 to \$0.01 per side. The Exchange desires to continue to incentivize Firms to transact electronic orders, by providing Firms with an opportunity to pay lower fees in Section II of the Pricing Schedule by offering a reduction of Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options,

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<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(4).

<sup>21</sup> The QCC Service Fee is applicable once the Firm has reached the Monthly Firm Fee Cap.

provided the Firm has volume greater than 750,000 electronically-delivered contracts in a month.

The Exchange believes that it is equitable and not unfairly discriminatory to offer lower transaction fees in Section II of the Pricing Schedule, in lieu of a cap on electronic equity option transactions, and to continue to offer the cap for non-electronic transactions, including electronic and non-electronic QCC Transactions. Firms will continue to be rewarded in terms of a cap on non-electronic equity option transactions and QCC Transactions, which represents the majority of Firm executions and would be able to achieve potentially greater per contract discounts from the proposed incentive offered for equity option transactions in Section II. Further, the Exchange believes that it is equitable and not unfairly discriminatory to exclude Firm electronic equity option transactions from the Monthly Firm Fee Cap, because a Firm transacting electronic orders would still be able to include electronic (and non-electronic) QCC transactions in the Monthly Firm Fee Cap and would also have the opportunity to reduce Section II Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options if the Firm achieved a certain volume in a month.

The Exchange believes that its proposal to reduce the QCC Service Fee applicable to the Monthly Firm Fee Cap, once a Firm has reached the Monthly Firm Fee Cap, from \$0.07 per side to \$0.01 per contract side is reasonable because the Exchange will no longer apply the Monthly Firm Fee Cap as broadly, including both electronic and non-electronic equity option orders, but rather will only apply the Cap to non-electronic equity option transactions and QCC Transactions. The Exchange does not believe it is necessary to assess a \$0.07 per side Service Fee on QCC Transactions at this time to

recoup costs, but instead believes it is reasonable to assess Firms a \$0.01 per contract QCC Service Fee, once Firms have reach the Monthly Firm Fee Cap, in order to recoup costs. This fee is comparable to the QCC Service Fee assessed by the International Securities Exchange, LLC (“ISE”).<sup>22</sup>

Further, the Exchange believes that its proposal to reduce the QCC Service Fee applicable to the Monthly Firm Fee Cap from \$0.07 per side to \$0.01 per contract side, once a Firm has reached the Monthly Firm Fee Cap, is equitable and not unfairly discriminatory because the reduction will be uniformly applied to all Firms transacting QCC Orders and exceeding the Monthly Firm Fee Cap. The QCC Service Fee of \$0.01 per side is proposed to recoup costs incurred by the Exchange to offer this capability including trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange.

The Exchange believes that reducing the QCC Service Fee applicable to the Monthly Firm Fee Cap from \$0.07 per side to \$0.01 per side, once the Firm has reached the Monthly Firm fee Cap is equitable and not unfairly discriminatory when compared to the Monthly Market Maker Cap because the Monthly Market Maker Cap is applicable to all equity options transaction fees and QCC Transaction Fees while the Monthly Firm Fee Cap would apply to non-electronic equity option transaction fees and QCC Transaction Fees. The corresponding reduction to the QCC Service Fee is related to the proposed amendment which would not include electronic equity option transaction fees in the Monthly Firm Fee Cap.

Additionally, the Exchange is eliminating the \$0.07 Service Fee for Firms that are

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<sup>22</sup> See ISE’s Fee Schedule.

on the contra-side of an electronically-delivered and executed Customer order. The Exchange believes that its proposal to eliminate the \$0.07 Service Fee for Firms that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Firm Fee Cap is reasonable because the Exchange is amending the applicability of the Monthly Firm Fee Cap to apply to non-electronic transactions and QCC Transactions, excluding electronic equity option transactions. The Exchange believes that its proposal to eliminate the \$0.07 Service Fee for Firms that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Firm Fee Cap is equitable and not unfairly discriminatory because it will be uniformly applied to all participants that qualify for the Service Fee. Further, the elimination of the Service Fee is related to the proposed amendment to exclude electronic equity option transaction fees from the Monthly Firm Fee Cap. The Exchange believes that eliminating the Service Fee is consistent with the proposed amendment to the Monthly Firm Fee Cap and its applicability to electronically-delivered orders.

#### Qualified Contingent Cross Orders Rebate Program

The Exchange believes that its proposal to amend the current rebates applicable to QCC Orders by replacing the current \$0.07 rebate for all qualifying executed QCC Orders up to 1,000,000 contracts in a month with certain exceptions or the \$0.11 per contract rebate for all qualifying executed QCC Orders over 1,000,000 with a tiered rebate schedule for QCC Orders is reasonable because the Exchange believes that the tiered schedule would continue to incentivize members. Also, the rebate structure for

QCC Orders is similar to rebates at ISE.<sup>23</sup>

The Exchange believes that its proposal to amend the current rebates applicable to QCC Orders by replacing the current \$0.07 rebate for all qualifying executed QCC Orders up to 1,000,000 contracts in a month with certain exceptions or the \$0.11 per contract rebate for all qualifying executed QCC Orders over 1,000,000 with a tiered rebate schedule for QCC Orders is equitable and not unfairly discriminatory because all market participants transacting QCC Orders would be subject to the same rebate schedule.

#### Customer Rebate

The Exchange's proposal to amend the applicability of the Section II Customer rebate of \$0.03 for all orders in that month if the member qualified for the \$0.07 rebate and also added liquidity in a Simple non-Penny Pilot Option or added or removed liquidity in a Complex Order Penny Pilot Option (including auctions) is reasonable because this proposed amendment broadens the types of Customer orders that are potentially eligible for the increased rebate and encourages members to transact a greater number of Customer orders, which Customer order flow benefits all market participants. Specifically, creating incentives and attracting Customer orders to the Exchange benefits all market participants through increased liquidity at the Exchange.

The Exchange's proposal to amend the applicability of the Section II Customer rebate of \$0.07 for all orders in that month if the member qualified for the \$0.03 rebate and also added liquidity in a Simple non-Penny Pilot Option or added or removed

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<sup>23</sup> See ISE's Fee Schedule.

liquidity in a Complex Order Penny Pilot Option (including auctions) is equitable and not unfairly discriminatory because the rebates would uniformly apply to all Customer transactions that meet the criteria for the rebate. Further, all market participants may equally qualify for the rebate.

#### Conforming Amendments

The Exchange's proposal to conform the text of Section I of the Pricing Schedule to reflect amendments to text in Section II of the Pricing Schedule is reasonable, equitable and not unfairly discriminatory because the amended text would clearly indicate what types of fees are included in the Monthly Firm Fee Cap and the applicability of the QCC Transaction fees and rebates. The Exchange believes that the proposed text clarifies the text of the Pricing 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 and rebate levels at a particular venue to be excessive. Accordingly, the fees that are assessed and the rebates paid by the Exchange must remain competitive with fees charged and rebates paid 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.

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>24</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>24</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-2012-61 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-2012-61. 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-2012-61 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>25</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>25</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**

\* \* \* \* \*

**I. Rebates and Fees for Adding and Removing Liquidity in Select Symbols**

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**Part C. The following will apply to fees in Parts A and B:**

- The Monthly Market Maker Cap on transaction fees that are currently applicable to Market Makers transacting equity options will not be applicable to electronic transactions in the Select Symbols, except for QCC Transaction Fees.
  - The Monthly Firm Fee Cap will apply to non-electronic transactions for Section I and Section II symbols, subject to the fees and rebates in Section II, and QCC electronic and non-electronic transactions.
- [● The Monthly Firm Fee Cap will not be applicable to the electronic transactions in the Select Symbols, except for QCC Transaction Fees, as defined in this section below.]
- Payment for Order Flow fees will not be collected on transactions in the Select Symbols.
  - The Cancellation Fee for each cancelled electronically delivered Professional AON order will continue to apply to the Select Symbols. The Cancellation Fee will not apply for each cancelled electronically delivered Customer order in Select Symbols.
  - Transactions in the Select Symbols executed via open outcry will be subject to the Equity Options Fees (see Equity Options Fees in Section II). However, if one side of the transaction is executed using the Options Floor Broker Management System and any other side of the trade was the result of an electronically submitted order or a quote, then these fees will apply to the FBMS contracts and contracts that are executed electronically on all sides of the transaction.
  - A non-Complex electronic auction includes the Quote and Market Exhaust auction and, for purposes of the these fees, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction ("COLA").
    - Customer executions that occur as part of a Complex electronic auction will receive the Rebate for Adding Liquidity as set forth in Part B. Customer executions that occur as part of a non-Complex electronic auction will receive the Rebate for Adding Liquidity as set forth in Part A, except when contra to another Customer order. Customers will not be assessed a Fee for Removing Liquidity for transactions that occur in either Complex electronic auctions or non-Complex electronic auctions.

- Professional, Directed Participant, Firm, Broker-Dealer and Market Maker executions that occur as part of a Complex electronic auction will be assessed the Fees for Removing Liquidity in Part B. Professional, Directed Participant, Firm, Broker-Dealer and Market Maker executions that occur as part of a non-Complex electronic auction will be assessed the Fees for Removing Liquidity in Part A.
- The QCC Transaction [F]fees and rebates, defined in Section II, are applicable to this Section I. [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 \$0.11 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.]

**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
<b>Options Transaction Charge (Penny Pilot)</b>	\$ .00	\$ .25	\$ .22	\$ .25	\$ .45	\$ .25	\$ .25	\$ .25
<b>Options Transaction Charge (non-Penny Pilot)</b>	\$ .00	\$ .25	\$ .23	\$ .25	\$ .60	\$ .25	\$ .40	\$ .25
<b>Options Surcharge in RUT, MNX and NDX</b>	N/A	\$ .15	\$ .15	\$ .15	\$ .15	\$ .15	\$ .15	\$ .15
<b>Options Surcharge in BKX</b>	N/A	\$ .10	\$ .10	\$ .10	\$ .10	\$ .10	\$ .10	\$ .10
<b>FLEX Options</b>	\$ .00	\$ .10	\$ .10	\$ .10	\$ .10	\$ .10	\$ .10	\$ .10
<b>Cabinet Options</b>	\$ .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.

- The Cabinet and FLEX Option Fees above are not in addition to the Options Transaction Charges.

- Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options will be reduced to \$.11 per contract for a given month provided that a Firm has volume greater than 750,000 electronically-delivered contracts in a month.

- 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, as specified in the below QCC Rebate Schedule, [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 \$0.11 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.]

QCC Rebate Schedule

<u>Threshold</u>	<u>Rebate per Contract</u>
<u>0 to 199,999 contracts in a month</u>	<u>\$0.00</u>
<u>200,000 to 499,999 contracts in a month</u>	<u>\$0.01</u>
<u>500,000 to 699,999 contracts in a month</u>	<u>\$0.05</u>
<u>700,000 to 999,999 contracts in a month</u>	<u>\$0.07</u>
<u>Over 1,000,000 contracts in a month</u>	<u>\$0.11</u>

- A rebate of \$0.07 per contract will be paid to members executing electronically-delivered Customer Orders when that member transacts an average daily volume of 50,000 Customer contracts or greater in a given month. Further, an additional rebate of \$0.03 per contract will be paid to members for those electronically-delivered Customer orders that: [(1)] qualified for the \$0.07 rebate; and [(ii)] added liquidity in a Simple order in a non-Penny Pilot [o]Option or added or removed liquidity (including auctions) in a Complex Order in a Penny Pilot Option. PIXL Orders and QCC Orders are not eligible for the rebate and are excluded from the calculation of the average daily volume.

## II. Equity Options Fees

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

- 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 order; and (ii) have reached the Monthly Market Maker Cap will be assessed a \$0.07 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.
- Firms are subject to a maximum fee of \$75,000 (“Monthly Firm Fee Cap”). Firm non-electronic 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 Firm, Fee 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 order; and (ii) have reached the Monthly Firm Fee Cap will be assessed a \$0.07 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 \$0.01[7] per side will apply once a Firm has reached the Monthly Firm Fee Cap. This \$0.01[7] 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.

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