OMB APPROVAL
OMB Number: 3235-0045 Estimated average burden hours per response............38

Required fields are shown with yellow backgrounds and asterisks.

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

File No.* SR - 2012 - * 64
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 *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☑ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 19b-4(f)(6)

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

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 *).

A proposed rule change to institute an Excess Order Fee.

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 * John
Last Name * Yetter
Title * Vice President
E-mail * john.yetter@nasdaqomx.com
Telephone * (301) 978-2497
Fax (301) 978-8472

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 05/11/2012

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.

Digitally Sign and Lock Form

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 Add Remove View 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 Add Remove View 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 Add Remove View	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 Add Remove View	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 Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to institute an Excess Order Fee.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached 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 Phlx pursuant to authority delegated by the Board of Directors of Phlx on August 19, 2011. Phlx staff will advise the Board of Directors of Phlx of any action taken pursuant to delegated authority. No other action by Phlx is necessary for the filing of the rule change. Phlx proposes to implement the proposed rule change on June 1, 2012.

Questions regarding this rule filing may be directed to John M. Yetter, Vice President and Deputy General Counsel, NASDAQ OMX, 301-978-8497.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

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

a. Purpose

Phlx is concerned that the inefficient order entry practices of certain market participants may be placing excessive burdens on Phlx's NASDAQ OMX PSX ("PSX") system and the member organizations that trade on it and may negatively impact the usefulness and life cycle cost of market data.[3] Market participants that flood the market with orders that are rapidly cancelled or that are priced away from the inside market do little to support meaningful price discovery, and in fact may create investor confusion about the extent of trading interest in a stock. In extreme instances, inefficient order entry may constitute "layering," the manipulative practice of using multiple orders at different price levels to move the price of a stock. While Phlx has an active program to detect and prosecute manipulative schemes, including layering,[4] it also believes that market quality can be improved through the imposition of a fee on market participants that engage in extremely inefficient order entry practices. Because Phlx believes that

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3 See generally Recommendations Regarding Regulatory Reponses to the Market Events of May 6, 2010, Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues, at 11 (February 18, 2011) ("The SEC and CFTC should also consider addressing the disproportionate impact that [high frequency trading] has on Exchange message traffic and market surveillance costs…. The Committee recognizes that there are valid reasons for algorithmic strategies to drive high cancellation rates, but we believe that this is an area that deserves further study. At a minimum, we believe that the participants of those strategies should properly absorb the externalized costs of their activity.").

4 Cf. FINRA Sanctions Trillium Brokerage Services, LLC, Director of Trading, Chief Compliance Officer, and Nine Traders $2.26 Million for Illicit Equities Trading Strategy (September 13, 2010) (available at http://www.finra.org/Newsroom/ News Releases/2010/P121951). The fee proposed in this filing will not in any way substitute for, or result in a diminution of, Phlx's surveillance program for market manipulation.

inefficient order entry is a problem associated with a relatively small number of market participants, and is therefore not a pervasive characteristic of today's markets, the impact of the fee will be narrow. In fact, it is Phlx's expectation that the fee will encourage potentially affected market participants to modify their order entry practices in order to avoid the fee, thereby improving the market for all participants. Accordingly, Phlx does not expect to earn significant revenues from the fee.

The fee will be imposed on market participant identifiers ("MPID") that have characteristics indicative of inefficient order entry practices. In general, the determination of whether to impose the fee on a particular MPID will be made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the national best bid or offer ("NBBO"), and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs with an "Order Entry Ratio" of more than 100. The Order Entry Ratio is calculated, and the Excess Order Fee imposed, on a monthly basis.

For each MPID, the Order Entry Ratio is the ratio of (i) the MPID's "Weighted Order Total" to (ii) the greater of one (1) or the number of displayed, non-marketable orders[5] sent to PSX through the MPID that execute in full or in part.[6] The Weighted Order Total is the number of displayed, non-marketable orders sent to PSX through the MPID, as adjusted by a "Weighting Factor." The applicable Weighting Factor is applied to each order based on its price in comparison to the NBBO at the time of order entry:

5 The fee focuses on displayed orders since they have the most significant impact on investor confusion and the quality of market data.

6 Thus, in an extreme case where no orders entered through the MPID executed, this component of the ratio would be assumed to be 1, so as to avoid the impossibility of dividing by zero.

Order's Price versus NBBO at Entry	Weighting Factor
Less than 0.20% away	0x
0.20% to 0.99% away	1x
1.00% to 1.99% away	2x
2.00% or more away	3x

Thus, in calculating the Weighted Order Total, an order that was more than 2.0% away from the NBBO would be equivalent to three orders that were 0.50% away. Due to the applicable Weighting Factor of 0x, orders entered less than 0.20% away from the NBBO would not be included in the Weighted Order Total, but would be included in the "executed" orders component of the Order Entry Ratio if they execute in full or part.[7] MPIDs with a daily average Weighted Order Total of less than 100,000 during the month will not be subject to the Excess Order Fee.[8]

The following example illustrates the calculation of the Order Entry Ratio:

- A member enters 15,000,000 displayed, liquidity-providing orders:
  - 10,000,000 orders are entered at the NBBO. The Weighting Factor for these orders is 0x.
  - 5,000,000 orders are entered at a price that is 1.50% away from the NBBO. The Weighting Factor for these orders is 2x.
- Of the 15,000,000 orders, 90,000 are executed.

[7] An analogous fee that was recently filed by The NASDAQ Stock Market LLC ("NASDAQ") includes an exclusion from both components of the ratio for orders sent by market makers in securities in which they are registered, through the MPID applicable to the registration. Because Phlx rules governing PSX currently do not allow for market maker registration, Phlx is not proposing a comparable exemption.

[8] Phlx believes that this exclusion is reasonable because an MPID with an extremely low volume of entered orders has only a de minims impact on the market.

- The Weighted Order Total is (10,000,000 x 0) + (5,000,000 x 2) = 10,000,000. The Order Entry Ratio is 10,000,000 / 90,000 = 111

If an MPID has an Order Entry Ratio of more than 100, the amount of the Order Entry Fee will be calculated by determining the MPID's "Excess Weighted Orders." Excess Weighted Orders are calculated by subtracting (i) the Weighted Order Total that would result in the MPID having an Order Entry Ratio of 100 from (ii) the MPID's actual Weighted Order Total. In the example above, the Weighted Order Total that would result in an Order Entry Ratio of 100 is 9,000,000, since 9,000,000 / 90,000 = 100. Accordingly, the Excess Weighted Orders would be 10,000,000 – 9,000,000 = 1,000,000.

The Excess Order Fee charged to the member will then be determined by multiplying the "Applicable Rate" by the number of Excess Weighted Orders. The Applicable Rate is determined based on the MPID's Order Entry Ratio:

Order Entry Ratio	Applicable Rate
101 – 1,000	$0.005
More than 1,000	$0.01

In the example above, the Applicable Rate would be $0.005, based on the MPID's Order Entry Ratio of 111. Accordingly, the monthly Excess Order Fee would be 1,000,000 x $0.005 = $5,000.

b. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and

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[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4) and (5).

other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Phlx believes that the Order Entry Fee is reasonable because it is designed to achieve improvements in the quality of displayed liquidity and market data that will benefit all market participants. In addition, although the level of the fee may theoretically be very high, the fee is reasonable because market participants may readily avoid the fee by making improvements in their order entry practices that reduce the number of orders they enter, bring the prices of their orders closer to the NBBO, and/or increase the percentage of their orders that execute. For similar reasons, the fee is consistent with an equitable allocation of fees, because although the fee may apply to only a small number of market participants, the fee would be applied to them in order to encourage better order entry practices that will benefit all market participants. Ideally, the fee will be applied to no one, because market participants will adjust their behavior in order to avoid the fee. Finally, Phlx believes that the fee is not unfairly discriminatory. Although the fee may apply to only a small number of market participants, it will be imposed because of the negative externalities that such market participants impose on others through inefficient order entry practices. Accordingly, Phlx believes that it is fair to impose the fee on these market participants in order to incentivize them to modify their behavior and thereby benefit the market.

Finally, Phlx believes that the fee will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, because the fee is designed to reduce the extent of non-actionable orders in the market, thereby promoting greater order interaction, increasing the quality of market data, and inhibiting potentially abusive trading practices.

4. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, Phlx believes that the fee will constrain market participants from pursuing certain inefficient and potentially abusive trading strategies. To the extent that this change may be construed as a burden on competition, Phlx believes that it is appropriate in order to further the purposes of Section 6(b)(5) of the Act.[11]

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor 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,[12] Phlx has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory

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11 15 U.S.C. 78f(b)(5).

12 15 U.S.C. 78s(b)(3)(A)(ii).

organization 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 based on a comparable fee recently instituted by NASDAQ. See SR-NASDAQ-2012-055 (April 30, 2012). As noted above, however, the NASDAQ fee provides an exclusion for market maker orders that Phlx is not proposing.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-Phlx-2012-64

May __, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Institute an Excess Order Fee.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 11, 2012, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II 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

Phlx proposes to institute an Excess Order Fee. Phlx will implement the proposed change on June 1, 2012. The text of the proposed rule change is available at http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/, at Phlx's principal office, 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 self-regulatory organization 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 those

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

Phlx is concerned that the inefficient order entry practices of certain market participants may be placing excessive burdens on Phlx's NASDAQ OMX PSX ("PSX") system and the member organizations that trade on it and may negatively impact the usefulness and life cycle cost of market data.[3] Market participants that flood the market with orders that are rapidly cancelled or that are priced away from the inside market do little to support meaningful price discovery, and in fact may create investor confusion about the extent of trading interest in a stock. In extreme instances, inefficient order entry may constitute "layering," the manipulative practice of using multiple orders at different price levels to move the price of a stock. While Phlx has an active program to detect and prosecute manipulative schemes, including layering,[4] it also believes that

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3 See generally Recommendations Regarding Regulatory Reponses to the Market Events of May 6, 2010, Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues, at 11 (February 18, 2011) ("The SEC and CFTC should also consider addressing the disproportionate impact that [high frequency trading] has on Exchange message traffic and market surveillance costs…. The Committee recognizes that there are valid reasons for algorithmic strategies to drive high cancellation rates, but we believe that this is an area that deserves further study. At a minimum, we believe that the participants of those strategies should properly absorb the externalized costs of their activity.").

4 Cf. FINRA Sanctions Trillium Brokerage Services, LLC, Director of Trading, Chief Compliance Officer, and Nine Traders $2.26 Million for Illicit Equities Trading Strategy (September 13, 2010) (available at http://www.finra.org/Newsroom/ News Releases/2010/P121951). The fee

market quality can be improved through the imposition of a fee on market participants that engage in extremely inefficient order entry practices. Because Phlx believes that inefficient order entry is a problem associated with a relatively small number of market participants, and is therefore not a pervasive characteristic of today's markets, the impact of the fee will be narrow. In fact, it is Phlx's expectation that the fee will encourage potentially affected market participants to modify their order entry practices in order to avoid the fee, thereby improving the market for all participants. Accordingly, Phlx does not expect to earn significant revenues from the fee.

The fee will be imposed on market participant identifiers ("MPID") that have characteristics indicative of inefficient order entry practices. In general, the determination of whether to impose the fee on a particular MPID will be made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the national best bid or offer ("NBBO"), and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs with an "Order Entry Ratio" of more than 100. The Order Entry Ratio is calculated, and the Excess Order Fee imposed, on a monthly basis.

For each MPID, the Order Entry Ratio is the ratio of (i) the MPID's "Weighted Order Total" to (ii) the greater of one (1) or the number of displayed, non-marketable orders[5] sent to PSX through the MPID that execute in full or in part.[6] The Weighted

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proposed in this filing will not in any way substitute for, or result in a diminution of, Phlx's surveillance program for market manipulation.

5 The fee focuses on displayed orders since they have the most significant impact on investor confusion and the quality of market data.

6 Thus, in an extreme case where no orders entered through the MPID executed, this component of the ratio would be assumed to be 1, so as to avoid the impossibility of dividing by zero.

Order Total is the number of displayed, non-marketable orders sent to PSX through the MPID, as adjusted by a "Weighting Factor." The applicable Weighting Factor is applied to each order based on its price in comparison to the NBBO at the time of order entry:

Order's Price versus NBBO at Entry	Weighting Factor
Less than 0.20% away	0x
0.20% to 0.99% away	1x
1.00% to 1.99% away	2x
2.00% or more away	3x

Thus, in calculating the Weighted Order Total, an order that was more than 2.0% away from the NBBO would be equivalent to three orders that were 0.50% away. Due to the applicable Weighting Factor of 0x, orders entered less than 0.20% away from the NBBO would not be included in the Weighted Order Total, but would be included in the "executed" orders component of the Order Entry Ratio if they execute in full or part.[7] MPIDs with a daily average Weighted Order Total of less than 100,000 during the month will not be subject to the Excess Order Fee.[8]

The following example illustrates the calculation of the Order Entry Ratio:

- A member enters 15,000,000 displayed, liquidity-providing orders:
    - 10,000,000 orders are entered at the NBBO. The Weighting Factor for these orders is 0x.

[7] An analogous fee that was recently filed by The NASDAQ Stock Market LLC ("NASDAQ") includes an exclusion from both components of the ratio for orders sent by market makers in securities in which they are registered, through the MPID applicable to the registration. Because Phlx rules governing PSX currently do not allow for market maker registration, Phlx is not proposing a comparable exemption.

[8] Phlx believes that this exclusion is reasonable because an MPID with an extremely low volume of entered orders has only a de minims impact on the market.

  - 5,000,000 orders are entered at a price that is 1.50% away from the NBBO. The Weighting Factor for these orders is 2x.

- Of the 15,000,000 orders, 90,000 are executed.
- The Weighted Order Total is (10,000,000 x 0) + (5,000,000 x 2) = 10,000,000. The Order Entry Ratio is 10,000,000 / 90,000 = 111

If an MPID has an Order Entry Ratio of more than 100, the amount of the Order Entry Fee will be calculated by determining the MPID's "Excess Weighted Orders." Excess Weighted Orders are calculated by subtracting (i) the Weighted Order Total that would result in the MPID having an Order Entry Ratio of 100 from (ii) the MPID's actual Weighted Order Total. In the example above, the Weighted Order Total that would result in an Order Entry Ratio of 100 is 9,000,000, since 9,000,000 / 90,000 = 100. Accordingly, the Excess Weighted Orders would be 10,000,000 – 9,000,000 = 1,000,000.

The Excess Order Fee charged to the member will then be determined by multiplying the "Applicable Rate" by the number of Excess Weighted Orders. The Applicable Rate is determined based on the MPID's Order Entry Ratio:

Order Entry Ratio	Applicable Rate
101 – 1,000	$0.005
More than 1,000	$0.01

In the example above, the Applicable Rate would be $0.005, based on the MPID's Order Entry Ratio of 111. Accordingly, the monthly Excess Order Fee would be 1,000,000 x $0.005 = $5,000.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Phlx believes that the Order Entry Fee is reasonable because it is designed to achieve improvements in the quality of displayed liquidity and market data that will benefit all market participants. In addition, although the level of the fee may theoretically be very high, the fee is reasonable because market participants may readily avoid the fee by making improvements in their order entry practices that reduce the number of orders they enter, bring the prices of their orders closer to the NBBO, and/or increase the percentage of their orders that execute. For similar reasons, the fee is consistent with an equitable allocation of fees, because although the fee may apply to only a small number of market participants, the fee would be applied to them in order to encourage better order entry practices that will benefit all market participants. Ideally, the fee will be applied to no one, because market participants will adjust their behavior in order to avoid the fee. Finally, Phlx believes that the fee is not unfairly discriminatory. Although the fee may apply to only a small number of market participants, it will be imposed because of the negative externalities that such market participants impose on others through

9 15 U.S.C. 78f.

10 15 U.S.C. 78f(b)(4) and (5).

inefficient order entry practices. Accordingly, Phlx believes that it is fair to impose the fee on these market participants in order to incentivize them to modify their behavior and thereby benefit the market.

Finally, Phlx believes that the fee will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, because the fee is designed to reduce the extent of non-actionable orders in the market, thereby promoting greater order interaction, increasing the quality of market data, and inhibiting potentially abusive trading practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, Phlx believes that the fee will constrain market participants from pursuing certain inefficient and potentially abusive trading strategies. To the extent that this change may be construed as a burden on competition, Phlx believes that it is appropriate in order to further the purposes of Section 6(b)(5) of the Act.[11]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[11] 15 U.S.C. 78f(b)(5).

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2012-64 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-2012-64. This file number should be included on the subject line if e-mail is used.

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[12] 15 U.S.C. 78s(b)(3)(a)(ii).

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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2012-64, 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.[13]

Kevin M. O'Neill
Deputy Secretary

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13 17 CFR 200.30-3(a)(12).

EXHIBIT 5

The text of the proposed rule change is below. Proposed new language is underlined; deletions are bracketed.

NASDAQ OMX PHLX LLC PRICING SCHEDULE

*** * * * ***

VIII. NASDAQ OMX PSX FEES

*** * * * ***

Order Execution and Routing

<u>(a) </u>The following charges and credits shall apply to the use of the order execution and routing services of the NASDAQ OMX PSX System by member organizations for all securities that it trades<u>:</u>

Charge to member organization entering order that executes in NASDAQ OMX PSX:	$0.0019 per share executed for securities listed on the New York Stock Exchange (”NYSE”) that are priced at $1 or more per share $0.0027 per share executed for other securities priced at $1 or more per share 0.20% of the total transaction cost for securities priced at less than $1 per share
Credit to member organization providing liquidity through the NASDAQ OMX PSX System:	
Displayed order with an original order size of 2,000 or more shares*	$0.0018 per share executed for securities listed on NYSE that are priced at $1 or more per share $0.0026 per share executed for other securities priced at $1 or more per share $0 for securities priced at less than $1.00 per share
Displayed order with an original order size of less	$0.0016 per share executed for

than 2,000 shares*	securities listed on NYSE that are priced at $1 or more per share $0.0024 per share executed for other securities priced at $1 or more per share $0 for securities priced at less than $1.00 per share
Minimum Life Order	$0.0018 per share executed for securities listed on NYSE that are priced at $1 or more per share $0.0026 per share executed for other securities priced at $1 or more per share $0 for securities priced at less than $1.00 per share
Non-Displayed Order	$0.0005 per share executed for securities listed on NYSE that are priced at $1 or more per share $0.0010 per share executed for other securities priced at $1 or more per share $0 for securities priced at less than $1.00 per share
Charge to member organization entering PSTG or PSCN order that executes in a venue other than the NASDAQ OMX PSX System for securities priced at $1 or more per share:	$0.0023 per share executed at NYSE Credit of $0.0014 per share executed at NASDAQ OMX BX $0.0027 per share executed in other venues
Charge to member organization entering PMOP order that executes in a venue other than the NASDAQ OMX PSX System for securities priced at $1 or more per share:	$0.0025 per share executed at NYSE $0.0031 per share executed at venues other than NYSE

Charge to member organization entering PTFY order that executes in a venue other than the NASDAQ OMX PSX System for securities priced at $1 or more per share:	$0.0022 per share executed at NYSE $0.0005 per share executed at venues other than NYSE, NASDAQ or NASDAQ OMX BX $0.0027 per share executed at NASDAQ Credit of $0.0014 per share executed at NASDAQ OMX BX
Charge to member organization entering PCRT order that executes in a venue other than the NASDAQ OMX PSX System for securities priced at $1 or more per share:	$0.0027 per share executed at NASDAQ Credit of $0.0014 per share executed at NASDAQ OMX BX
Charge to member organization entering order that executes in a venue other than the NASDAQ OMX PSX System for securities priced at less than $1 per share:	0.3% of the total transaction cost

* An order will be treated as the original order if it is decremented due to executions. However, orders that are modified by the PSX Participant entering the order or by the System processes other than execution and decrementation will be treated as a new order.

<u>(b) Excess Order Fee</u>

<u>(1) To deter member organizations that are PSX Participants from inefficient order entry practices that place excessive burdens on the systems of the Exchange and other member organizations and that may negatively impact the usefulness of market data, the Exchange imposes an Excess Order Fee on market participant identifiers (“MPIDs”) with an “Order Entry Ratio” of more than 100. The Order Entry Ratio is calculated, and the Excess Order Fee imposed, on a monthly basis.</u>

<u>(2) For each MPID, the Order Entry Ratio is the ratio of (i) the MPID’s Weighted Order Total to (ii) the greater of one (1) or the number of displayed, non-marketable orders sent to NASDAQ OMX PSX through the MPID that execute in full or in part. The Weighted Order Total is the number of displayed, non-marketable orders sent to NASDAQ OMX PSX through the MPID, as adjusted by a “Weighting Factor.” The applicable Weighting Factor is applied to each order based on its price in comparison to the national best bid or best offer (“NBBO”) at the time of order entry:</u>

Order's Price versus NBBO at Entry	Weighting Factor
Less than 0.20% away	0x
0.20% to 0.99% away	1x
1.00% to 1.99% away	2x
2.00% or more away	3x

Thus, in calculating the Weighted Order Total, an order that was more than 2.0% away from the NBBO would be equivalent to three orders that were 0.50% away. Due to the applicable Weighting Factor of 0x, orders entered less than 0.20% away from the NBBO would not be included in the Weighted Order Total, but would be included in the "executed" orders component of the Order Entry Ratio if they execute in full or part. The following example illustrates the calculation of the Order Entry Ratio:

- A member organization enters 15,000,000 displayed, liquidity-providing orders:
    - 10,000,000 orders are entered at the NBBO. The Weighting Factor for these orders is 0x.
    - 5,000,000 orders are entered at a price that is 1.50% away from the NBBO. The Weighting Factor for these orders is 2x.
- Of the 15,000,000 orders, 90,000 are executed.
- The Weighted Order Total is (10,000,000 x 0) + (5,000,000 x 2) = 10,000,000. The Order Entry Ratio is 10,000,000 / 90,000 = 111

(3) If an MPID has an Order Entry Ratio of more than 100, the Order Entry Fee will be calculated by determining the MPID's Excess Weighted Orders. Excess Weighted Orders are calculated by subtracting (i) the Weighted Order Total that would result in the MPID having an Order Entry Ratio of 100 from (ii) the MPID's actual Weighted Order Total.

In the example above, the Weighted Order Total that would result in an Order Entry Ratio of 100 is 9,000,000, since 9,000,000 / 90,000 = 100. Accordingly, the Excess Weighted Orders would be 10,000,000 – 9,000,000 = 1,000,000.

The Excess Order Fee charged to the member organization will then be determined by multiplying the Applicable Rate by the number of Excess Weighted Orders. The Applicable Rate is determined based on the MPID's Order Entry Ratio.

Order Entry Ratio	Applicable Rate
101 – 1,000	$0.005
More than 1,000	$0.01

In the example above, the Applicable Rate would be $0.005, based on the MPID's Order Entry Ratio of 111. Accordingly, the monthly Excess Order Fee would be 1,000,000 x $0.005 = $5,000.

(4) Notwithstanding the foregoing, MPIDs with a daily average Weighted Order Total of less than 100,000 during the month will not be subject to the Excess Order Fee.