

Required fields are shown with yellow backgrounds and asterisks.

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"/>	19b-4(f)(1) <input type="checkbox"/>	19b-4(f)(2) <input checked="" type="checkbox"/>	19b-4(f)(3) <input type="checkbox"/>	19b-4(f)(4) <input type="checkbox"/>	19b-4(f)(5) <input type="checkbox"/>	19b-4(f)(6) <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).
Relating to Pricing in Select Symbols and Multiply-Listed Options

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * Angela Last Name * Dunn
Title * Associate General Counsel
E-mail * angela.dunn@nasdaqomx.com
Telephone * (215) 496-5692 Fax

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

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

Date 07/02/2012
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”) ¹ and Rule 19b-4 thereunder, ² proposes to amend the Select Symbols³ and fees in Section I and amend a fee and adopt a Customer Rebate Program in Section II of the Pricing Schedule. The Exchange also proposes to make a minor amendment to Section I.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Select Symbols are subject to the fees and rebates in Section I of the Pricing Schedule. See Section I for a complete list of Select Symbols.

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

a. Purpose

The Exchange proposes to make various amendments to Section I of the Pricing Schedule entitled “Fees and Rebates for Adding and Removing Liquidity in Select Symbols.” The Exchange proposes to delete the following Select Symbols from the list of symbols subject to the fees and rebates in Section I: Barrick Gold Corporation (“ABX”), eBay Inc. (“EBAY”), Corning Inc. (“GLW”), Procter & Gamble Co. (“PG”), Potash Corp. of Saskatchewan, Inc. (“POT”), Starbucks Corporation (“SBUX”), SanDisk Corp. (“SNDK”) and United Continental Holdings, Inc. (“UAL”) (collectively “Proposed Deleted Symbols”). These Proposed Deleted Symbols would be subject to the rebates and fees in Section II of the Pricing Schedule entitled “Multiply Listed Options Fees.”⁴

The Exchange proposes to amend the title of Section I, Part A from “Single contra-side” to “Simple Order.” The Exchange believes this amendment better describes the type of orders subject to the fees and rebates in Section I, Part A of the Pricing Schedule. The Exchange also proposes to increase the Specialist⁵ and Market Maker⁶ Fees for Removing Liquidity in Section I, Part A from \$0.38 per contract to \$0.39 per

⁴ Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are Multiply Listed.

⁵ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

⁶ For purposes of the Pricing Schedule, the term “Market Maker” is utilized to describe fees and rebates applicable to ROTs, SQTs and RSQTs. The term “ROT, SQT and RSQT” applies to transactions for the accounts of Registered Option Traders (“ROTs”), Streaming Quote Traders (“SQTs”), and Remote Streaming Quote Traders (“RSQTs”).

contract. The Exchange believes that the increased fees better align the Fees for Removing Liquidity by assessing Customers the same fee as a Specialist and Market Maker.

The Exchange proposes to amend the Electronic Firm Fee Discount which today provides that Firm electronic Options Transaction Charges in Penny Pilot⁷ and non-Penny Pilot Options will be reduced to \$0.11 per contract for a given month provided the Firm has volume greater than 750,000 electronically-delivered contracts in a month. The Exchange proposes to reduce the amount of the discount by increasing the Options Transaction Charge to \$0.13 per contract from \$0.11 per contract. While the Exchange desires to continue to incentivize Firms to increase the volume executed on Phlx, the Exchange believes that reducing the Options Transactions Charges to \$0.13 per contract is still a significant incentive for Firms.

The Exchange also proposes to cap the Qualified Contingent Cross Rebate (“QCC

⁷ The Penny Pilot was established in January 2007 and in October 2009 was expanded and extended through December 31, 2010. 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); 65976 (December 15, 2011), 76 FR 79247 (December 21, 2011)(SR-Phlx-2011-172)(notice of filing and immediate effectiveness extending the Penny Pilot); and (SR-Phlx-2012-86)(not published) (notice of filing and immediate effectiveness extending the Penny Pilot). See also Exchange Rule 1034.

Rebate”) to be paid in a given month at \$275,000. The QCC Rebate is applicable to both electronic QCC Orders (“eQCC”)⁸ and Floor QCC Orders,⁹ except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend,¹⁰ merger¹¹ or short stock interest strategy¹² and executions subject to the Reversal and Conversion Cap¹³ (as defined in

⁸ 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 (“NBBO”) 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 the Regulation NMS).

⁹ 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 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).

¹⁰ 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.

¹¹ 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.

¹² 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.

¹³ Specialist, Market Maker, Professional, Firm and Broker-Dealer options transaction fees in Multiply Listed Options are capped at \$500 per day for reversal and conversion

Section II). QCC Transaction Fees apply to Sections I and II of the Pricing Schedule and are subject to the Monthly Firm Fee Cap¹⁴ and the Monthly Market Maker Cap.¹⁵ The Exchange believes that the proposed cap, while limiting the amount of rebate a market participant may obtain in extremely high industry volume months, will not hinder participants in continuing to execute QCC Orders to obtain the highest possible rebate.

The Exchange proposes to eliminate the \$0.07 per contract rebate for 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. Also, the additional rebate of \$0.03 per contract, which is paid to members for 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, would be eliminated.¹⁶ The

strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts.

¹⁴ 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 in the aggregate, for one billing month, may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, short stock interest and reversal and conversion strategy executions are excluded from the Monthly Firm Fee Cap. The Firm equity options transaction fees are waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account.

¹⁵ Specialists and Market Makers are currently subject to a Monthly Market Maker Cap of \$550,000 for equity option transaction fees and QCC Transaction Fees. The trading activity of separate Specialist and 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.

¹⁶ PIXL Orders and QCC Orders are not eligible for the rebate and are excluded from the calculation of the average daily volume.

Exchange proposes to instead offer a more detailed Customer Rebate Program as described below, which will replace the rebates that are being eliminated.

The Exchange proposes to adopt a revised rebate program entitled “Customer Rebate Program” for Multiply Listed Options¹⁷, which has some similarities to the rebates that are being eliminated in Section II of the Pricing Schedule. The proposed Customer Rebate Program will consist of three tiers. The first tier (“Tier 1”) (0 to 49,999 contracts in a month) will not earn any rebates. This is the case today. The second tier (“Tier 2”) (50,000 to 99,999 contracts in a month) will remain the same as the current rebate offered today that is being eliminated.¹⁸ The third tier (“Tier 3”) (over 100,000 contracts in a month) will introduce higher rebates as an additional incentive for member organizations to route Customer order flow to the Exchange for execution, with the exception of Category C, which will remain the same as it is today (\$0.10 per contract).

Each tier or “Threshold” would be calculated by totaling all applicable Multiply-Listed electronically-delivered Customer Orders, except electronic Qualified Contingent Cross Orders (eQCC Orders). PIXL orders are currently excluded from the Threshold computations for the rebates that exist today and are being eliminated; this differs for the Customer Rebate Program. The rebates would be paid for all electronically delivered Customer orders in a given month as follows:

¹⁷ This includes options overlying equities, ETFs, ETNs, indexes and HOLDERS which are Multiply Listed and excludes SOX, HGX and OSX and the Select Symbols.

¹⁸ The Exchange currently offers a rebate of \$0.07 per contract, which is paid to members executing electronically-delivered Customer Orders when the 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 is paid 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. This rebate scheme is being eliminated and replaced with the Customer Rebate Program.

Average Daily Volume Threshold	Rebate per Contract Categories		
	Category A	Category B	Category C
0 to 49,999 contracts in a month	\$0.00	\$0.00	\$0.00
50,000 to 99,999 contracts in a month	\$0.07	\$0.10	\$0.10
Over 100,000 contracts in a month	\$0.09	\$0.12	\$0.10

Category A rebates would be paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options, Simple Orders in Non-Penny Pilot Options that removed liquidity and Complex Orders in Non-Penny Pilot Options. Category B rebates would be paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Category C rebates would be paid to members executing electronically-delivered Customer Simple Orders in Non-Penny Pilot Options that added liquidity. The Threshold would be calculated by totaling Customer volume in Multiply Listed Options that are electronically-delivered, except electronic QCC Orders (eQCC Orders) as defined in Exchange Rule 1080(o) (“Threshold Volume”). Rebates will be paid on Threshold Volume in a given month, excluding electronically-delivered Customer volume associated with PIXL.¹⁹ The Exchange believes that this proposed Customer Rebate Program will attract additional Customer order flow to the Exchange for the benefit of all market participants through increased liquidity.

¹⁹ PIXL is the Exchange’s price improvement mechanism known as Price Improvement XL or (PIXLSM).

Finally, the Exchange is proposing to increase the current fee applicable to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Market Maker Cap. Today, the Exchange assesses Specialists and Market Makers a \$0.07 per contract fee, in both Select Symbols and Multiply Listed Symbols (Sections I and II) when contra to an electronically-delivered and executed Customer order and when the Monthly Market Maker Cap is exceeded. PIXL Orders are excluded today. This would remain the same except the Exchange proposes to increase this fee from \$0.07 to \$0.12 per contract to assist in recouping costs associated with providing a Customer Rebate Program. The Exchange believes that this fee increase would enable the Exchange to offer the Customer Rebate Program as proposed.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act²⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act²¹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Select Symbols

The Exchange believes that it is reasonable to remove the Proposed Deleted Symbols from its list of Select Symbols to attract additional order flow to the Exchange. The Exchange believes that applying the fees in Section II of the Pricing Schedule to the

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(4).

Proposed Deleted Symbols, including the opportunity to receive payment for order flow, will continue to attract order flow to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to remove the Proposed Deleted Symbols because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the rebates and fees in Section I of the Pricing Schedule, which would not include the Proposed Deleted Symbols. Also, all market participants would be uniformly subject to the fees and Customer Rebate Program in Section II, which would include the Proposed Deleted Symbols.

Section I - Fee Amendments

The Exchange believes its proposal to amend the Specialist and Market Maker Fees for Removing Liquidity in Section I, Part A from \$0.38 per contract to \$0.39 per contract is reasonable, equitable and not unfairly discriminatory because the Exchange would assess Specialists and Market Makers the same Fee for Removing Liquidity as a Customer. The Exchange notes that Specialists and Market Makers are assessed lower Options Transaction Charges as compared to other market participants, except Customers, because they have burdensome quoting obligations²² to the market which do not apply to Customers, Professionals, Firms and Broker-Dealers. The proposed differentiation as between Customers, Specialists and Market Makers as compared to

²² See Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

Professionals, Firms and Broker-Dealers recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. The Exchange believes that the increased fees better align the Fees for Removing Liquidity by assessing Customers the same fee as a Specialist and Market Maker.

Section II - Electronic Firm Fee Discount

The Exchange's proposal to increase the fee thereby decrease the Electronic Firm Fee Discount for both electronic Penny Pilot and non-Penny Pilot Options from \$0.11 per contract to \$0.13 per contract is reasonable because the amendment would enable the Exchange to reward market participants that directed Customer orders to the Exchange by paying rebates as proposed herein, which in turn benefits all market participants.

The Exchange believes decreasing the Electronic Firm Fee Discount for both electronic Penny Pilot and non-Penny Pilot Options from \$0.11 per contract to \$0.13 per contract is equitable and not unfairly discriminatory because the Exchange is continuing to incentivize Firms by providing the ability to significantly lower fees and also earn rebates in the Customer Rebate Program. All Firms will continue to have an opportunity to qualify for a lower fee provided they achieve the requisite volume. The Exchange believes this Electronic Firm Fee Discount will continue to act as an incentive to attract electronic Firm volume to the Exchange.

QCC Rebate

The Exchange believes that its proposal to cap the QCC Rebate at \$275,000 per month is reasonable because the Exchange is proposing to provide other incentives in

Section II to attract volume. Also, this cap, while limiting the amount of rebate that a market participant would receive for transacting a certain amount of QCC volume, will continue to incentivize market participants to seek to obtain the highest rebate possible. The Exchange believes that its proposal to cap the QCC Rebate at \$275,000 per month is equitable and not unfairly discriminatory because all market participants would be uniformly capped at \$275,000 per month.

Elimination of Rebate

The Exchange's proposal to eliminate the \$0.07 per contract rebate for 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 and the additional rebate of \$0.03 per contract for electronically-delivered Customer orders that qualified for the \$0.07 rebate are reasonable because the elimination of these rebates will enable the Exchange to reward market participants that add liquidity to the Exchange with the proposed Customer Rebate Program and in turn benefit all market participants. The elimination of the two-tiered rebate is equitable and not unfairly discriminatory because it would be uniformly eliminated and unavailable to all market participants. In addition, the Customer Rebate Program would be available to these market participants.

Customer Rebate

The Exchange's adoption of a Customer Rebate Program in Section II of the Pricing Schedule is reasonable because the Exchange is seeking to incentivize members to route Multiply-Listed electronically-delivered Customer orders to the Exchange, with

the exception of electronic QCC Orders. The Exchange believes that the proposed Volume Thresholds are reasonable because the Exchange believes that the thresholds are attainable to members desiring to increase their volume to achieve certain rebates and also bring greater Customer liquidity to the Exchange. By incentivizing members to route Customer orders, the Exchange desires to attract Customer orders which benefits all market participants by increasing liquidity on the Exchange. Other exchanges employ incentive programs.²³ The Exchange believes that its proposed volume thresholds and rates will be competitive as compared to rebate structures at other exchanges and attract order flow to the Exchange.

The Exchange also believes that it is reasonable to base rebates not only on volume but on the type of order by creating three categories, A, B and C, which specify the type of order that is eligible for certain rebates within each volume tier or Threshold. The Exchange is not only seeking to incentivize volume in Multiply-Listed Options but also seeks to incentivize market participants to transact certain types of Simple and Complex Orders in both Penny Pilot and non-Penny Pilot Options. The Exchange believes that the proposed calculation of the Volume Threshold, totaling all Multiply-Listed electronically delivered Customer volume, is reasonable because the Exchange believes that too will incentivize members to route Multiply-Listed electronically-delivered Customer orders to the Exchange, with the exception of electronic QCC Orders

²³ See the Chicago Board Options Exchange, Incorporated's ("CBOE") Fees Schedule. CBOE offers each Trading Permit Holder ("TPH") a credit for each public customer order transmitted by the TPH which is executed electronically in all multiply-listed option classes, excluding QCC trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan, provided the TPH meets certain volume thresholds in a month (Volume Incentive Program).

(eQCC Orders). The Exchange believes that its proposal to exclude electronic QCC Orders (eQCC Orders) from the Threshold calculation is reasonable because QCC has its own rebate schedule. Finally, the Exchange believes that excluding PIXL from the rebates is reasonable because the Exchange is not seeking to incentivize members to transact PIXL Orders. Also, today PIXL Orders and QCC Orders are not eligible for the rebate and are excluded from the calculation of the average daily volume. The Exchange assesses PIXL Orders its own fees as set forth in Section IV, Part A of the Pricing Schedule. Certain rebates are available for PIXL Orders as noted in that section of the Pricing Schedule.

The Exchange also believes the proposed Customer Rebate Program is equitable and not unfairly discriminatory because all market participants are eligible to receive a rebate provided they meet both the volume and order type requirements. The Exchange believes that incentivizing members to direct Customer order flow to the Exchange will provide all market participants an opportunity to interact with that order flow. Also, the Exchange believes it is equitable and not unfairly discriminatory to base rebates not only on volume but on the type of orders because the Exchange would uniformly apply the rebates to all market participants by order type. The Exchange currently offers no rebate for Tier 1 (between 0 and 49,999 contracts in a month). The Exchange currently offers a rebate of \$0.07 per contract to members that execute electronically-delivered Customer orders (Simple or Complex) when transacting an average daily volume of 50,000 contracts.²⁴ This is similar to the Category A rebate in Tier 2 (50,000 to 99,999 contracts

²⁴ The Exchange is proposing to pay a \$0.07 rebate to members that qualify for

in a month) of \$0.07 per contract. Further, Categories B²⁵ and C²⁶ in Tier 2 would receive a \$0.10 per contract rebate similar to today. The Exchange currently pays an additional rebate of \$0.03 per contract to members for electronically-delivered Customer orders that qualified for the \$0.07 rebate and added liquidity in a Simple Order in a non-Penny Pilot or added or removed liquidity in a Complex Order in a Penny Pilot Option for a total rebate of \$0.10 per contract. With respect to Tier 3 (over 100,000 contracts in a month), the Exchange would pay an increased rebate of \$0.09 per contract to members that qualify for Category A (today those members receive a \$0.07 per contract rebate). Members that qualify for Category B would receive an increased rebate of \$0.12 per contract (today those members receive a \$0.10 per contract rebate). Members that qualify for Category C would receive the same \$0.10 per contract rebate as today. In assessing the threshold categories and rates for rebates, the Exchange proposed rebates that it believes are competitive in light of other rebate structures offered today at other options exchanges.

The Exchange believes that the proposed calculation of the Volume Threshold, totaling all Multiply-Listed electronically delivered Customer volume, is equitable and not unfairly discriminatory because the calculation of the Volume Threshold would be uniformly applied to all market participants. The Exchange believes that its proposal to

a Category A, Tier 2 rebate for electronically-delivered Customer Simple Orders in Penny Pilot Options, Simple Orders in Non-Penny Pilot Options that remove liquidity and Complex Orders in Non-Penny Pilot Options.

²⁵ A Category B rebate will be paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options.

²⁶ A Category C rebate will be paid to members executing electronically-delivered Customer Simple Orders in Non-Penny Pilot Options that add liquidity.

exclude electronic QCC Orders (eQCC Orders) from the Threshold calculation is equitable and not unfairly discriminatory because no rebate would be paid on QCC Orders as a result of their exclusion from this section, but this would not impact the ability to obtain a rebate for QCC Orders as per the QCC Rebate schedule. Finally, the Exchange believes that excluding PIXL Orders from the rebates is equitable and not unfairly discriminatory because the Exchange would uniformly allow market participants to count PIXL Orders in the Volume Threshold but would uniformly not pay rebates on those orders.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to only offer rebates for Customer orders and not to other market participants. Customer order flow brings unique benefits to the marketplace in terms of liquidity and order interaction. It is an important Exchange function to provide an opportunity to all market participants to trade against Customer orders.

Section II Monthly Market Cap

The Exchange's proposal to increase the current fee applicable to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Market Maker Cap from \$0.07 to \$0.12 per contract is reasonable because it would enable the Exchange to offer the proposed Customer Rebate Program to market participants that direct Customer orders to the Exchange and in turn benefits all market participants.

The proposed increase to the current fee applicable to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer

order and have reached the Monthly Market Maker Cap from \$0.07 to \$0.12 per contract is equitable and not unfairly discriminatory because this fee would be uniformly applied to all Specialists and Market Makers that qualified for the Cap and are on the contra-side of an electronically-delivered and executed Customer order. The Exchange recently amended the Monthly Firm Fee Cap to only apply to non-electronic equity options transaction fees. A Specialist or Market Maker is able to qualify for the Monthly Market Maker Cap without such a limitation as is currently applied to the Monthly Firm Fee Cap. There is no corresponding fee for the Monthly Firm Fee Cap because fees from electronically-delivered and executed volume are not included in the Monthly Firm Fee Cap and therefore the Exchange does not need to implement a similar fee to cover the cost of offering rebates for electronically-delivered and executed Customer volume.

Miscellaneous

The Exchange's proposal to amend the title of Part A from "Single contra-side" to "Simple Order" is reasonable, equitable and not unfairly discriminatory because the Exchange believes the caption "Simple Orders" more accurately describes the types of orders subject to the fees and rebates in Section I, Part A of the Pricing Schedule. This amendment is merely technical in nature and does not impact pricing.

The Exchange operates in a highly competitive market, comprised of ten 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. To the contrary, the Exchange believes that incentivizing members with a Customer Rebate Program and increasing other fees to allow the Exchange to offer competitive rebates will attract Customer liquidity to the Exchange and benefit all market participants.

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,²⁷ 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

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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.

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2012-90)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Pricing in Select Symbols and Multiply-Listed Options

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 July 2, 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 the Select Symbols³ and fees in Section I and amend a fee and adopt a Customer Rebate Program in Section II of the Pricing Schedule. The Exchange also proposes to make a minor amendment to Section I.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Select Symbols are subject to the fees and rebates in Section I of the Pricing Schedule. See Section I for a complete list of Select Symbols.

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

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

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

1. Purpose

The Exchange proposes to make various amendments to Section I of the Pricing Schedule entitled “Fees and Rebates for Adding and Removing Liquidity in Select Symbols.” The Exchange proposes to delete the following Select Symbols from the list of symbols subject to the fees and rebates in Section I: Barrick Gold Corporation (“ABX”), eBay Inc. (“EBAY”), Corning Inc. (“GLW”), Procter & Gamble Co. (“PG”), Potash Corp. of Saskatchewan, Inc. (“POT”), Starbucks Corporation (“SBUX”), SanDisk Corp. (“SNDK”) and United Continental Holdings, Inc. (“UAL”) (collectively “Proposed Deleted Symbols”). These Proposed Deleted Symbols would be subject to the rebates and fees in Section II of the Pricing Schedule entitled “Multiply Listed Options Fees.”⁴

The Exchange proposes to amend the title of Section I, Part A from “Single contra-side” to “Simple Order.” The Exchange believes this amendment better describes the type of orders subject to the fees and rebates in Section I, Part A of the Pricing

⁴ Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are Multiply Listed.

Schedule. The Exchange also proposes to increase the Specialist⁵ and Market Maker⁶ Fees for Removing Liquidity in Section I, Part A from \$0.38 per contract to \$0.39 per contract. The Exchange believes that the increased fees better align the Fees for Removing Liquidity by assessing Customers the same fee as a Specialist and Market Maker.

The Exchange proposes to amend the Electronic Firm Fee Discount which today provides that Firm electronic Options Transaction Charges in Penny Pilot⁷ and non-Penny Pilot Options will be reduced to \$0.11 per contract for a given month provided the

⁵ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

⁶ For purposes of the Pricing Schedule, the term “Market Maker” is utilized to describe fees and rebates applicable to ROTs, SQTs and RSQTs. The term “ROT, SQT and RSQT” applies to transactions for the accounts of Registered Option Traders (“ROTs”), Streaming Quote Traders (“SQTs”), and Remote Streaming Quote Traders (“RSQTs”).

⁷ The Penny Pilot was established in January 2007 and in October 2009 was expanded and extended through December 31, 2010. 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); 65976 (December 15, 2011), 76 FR 79247 (December 21, 2011)(SR-Phlx-2011-172)(notice of filing and immediate effectiveness extending the Penny Pilot); and (SR-Phlx-2012-86)(not published) (notice of filing and immediate effectiveness extending the Penny Pilot). See also Exchange Rule 1034.

Firm has volume greater than 750,000 electronically-delivered contracts in a month. The Exchange proposes to reduce the amount of the discount by increasing the Options Transaction Charge to \$0.13 per contract from \$0.11 per contract. While the Exchange desires to continue to incentivize Firms to increase the volume executed on Phlx, the Exchange believes that reducing the Options Transactions Charges to \$0.13 per contract is still a significant incentive for Firms.

The Exchange also proposes to cap the Qualified Contingent Cross Rebate (“QCC Rebate”) to be paid in a given month at \$275,000. The QCC Rebate is applicable to both electronic QCC Orders (“eQCC”)⁸ and Floor QCC Orders,⁹ except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend,¹⁰ merger¹¹ or short stock interest

⁸ 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 (“NBBO”) 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 the Regulation NMS).

⁹ 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 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).

¹⁰ 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.

strategy¹² and executions subject to the Reversal and Conversion Cap¹³ (as defined in Section II). QCC Transaction Fees apply to Sections I and II of the Pricing Schedule and are subject to the Monthly Firm Fee Cap¹⁴ and the Monthly Market Maker Cap.¹⁵ The Exchange believes that the proposed cap, while limiting the amount of rebate a market participant may obtain in extremely high industry volume months, will not hinder participants in continuing to execute QCC Orders to obtain the highest possible rebate.

The Exchange proposes to eliminate the \$0.07 per contract rebate for members executing electronically-delivered Customer Orders when that member transacts an

¹¹ 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.

¹² 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.

¹³ Specialist, Market Maker, Professional, Firm and Broker-Dealer options transaction fees in Multiply Listed Options are capped at \$500 per day for reversal and conversion strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts.

¹⁴ 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 in the aggregate, for one billing month, may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, short stock interest and reversal and conversion strategy executions are excluded from the Monthly Firm Fee Cap. The Firm equity options transaction fees are waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account.

¹⁵ Specialists and Market Makers are currently subject to a Monthly Market Maker Cap of \$550,000 for equity option transaction fees and QCC Transaction Fees. The trading activity of separate Specialist and 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.

average daily volume of 50,000 Customer contracts or greater in a given month. Also, the additional rebate of \$0.03 per contract, which is paid to members for 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, would be eliminated.¹⁶ The Exchange proposes to instead offer a more detailed Customer Rebate Program as described below, which will replace the rebates that are being eliminated.

The Exchange proposes to adopt a revised rebate program entitled “Customer Rebate Program” for Multiply Listed Options¹⁷, which has some similarities to the rebates that are being eliminated in Section II of the Pricing Schedule. The proposed Customer Rebate Program will consist of three tiers. The first tier (“Tier 1”) (0 to 49,999 contracts in a month) will not earn any rebates. This is the case today. The second tier (“Tier 2”) (50,000 to 99,999 contracts in a month) will remain the same as the current rebate offered today that is being eliminated.¹⁸ The third tier (“Tier 3”) (over 100,000 contracts in a month) will introduce higher rebates as an additional incentive for member

¹⁶ PIXL Orders and QCC Orders are not eligible for the rebate and are excluded from the calculation of the average daily volume.

¹⁷ This includes options overlying equities, ETFs, ETNs, indexes and HOLDERS which are Multiply Listed and excludes SOX, HGX and OSX and the Select Symbols.

¹⁸ The Exchange currently offers a rebate of \$0.07 per contract, which is paid to members executing electronically-delivered Customer Orders when the 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 is paid 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. This rebate scheme is being eliminated and replaced with the Customer Rebate Program.

organizations to route Customer order flow to the Exchange for execution, with the exception of Category C, which will remain the same as it is today (\$0.10 per contract).

Each tier or “Threshold” would be calculated by totaling all applicable Multiply-Listed electronically-delivered Customer Orders, except electronic Qualified Contingent Cross Orders (eQCC Orders). PIXL orders are currently excluded from the Threshold computations for the rebates that exist today and are being eliminated; this differs for the Customer Rebate Program. The rebates would be paid for all electronically delivered Customer orders in a given month as follows:

Average Daily Volume Threshold	Rebate per Contract Categories		
	Category A	Category B	Category C
0 to 49,999 contracts in a month	\$0.00	\$0.00	\$0.00
50,000 to 99,999 contracts in a month	\$0.07	\$0.10	\$0.10
Over 100,000 contracts in a month	\$0.09	\$0.12	\$0.10

Category A rebates would be paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options, Simple Orders in Non-Penny Pilot Options that removed liquidity and Complex Orders in Non-Penny Pilot Options.

Category B rebates would be paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Category C rebates would be paid to members executing electronically-delivered Customer Simple Orders in Non-Penny Pilot Options that added liquidity. The Threshold would be calculated by totaling Customer volume in Multiply Listed Options that are electronically-delivered, except

electronic QCC Orders (eQCC Orders) as defined in Exchange Rule 1080(o) (“Threshold Volume”). Rebates will be paid on Threshold Volume in a given month, excluding electronically-delivered Customer volume associated with PIXL.¹⁹ The Exchange believes that this proposed Customer Rebate Program will attract additional Customer order flow to the Exchange for the benefit of all market participants through increased liquidity.

Finally, the Exchange is proposing to increase the current fee applicable to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Market Maker Cap. Today, the Exchange assesses Specialists and Market Makers a \$0.07 per contract fee, in both Select Symbols and Multiply Listed Symbols (Sections I and II) when contra to an electronically-delivered and executed Customer order and when the Monthly Market Maker Cap is exceeded. PIXL Orders are excluded today. This would remain the same except the Exchange proposes to increase this fee from \$0.07 to \$0.12 per contract to assist in recouping costs associated with providing a Customer Rebate Program. The Exchange believes that this fee increase would enable the Exchange to offer the Customer Rebate Program as proposed.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act²⁰ in general, and furthers the objectives of Section

¹⁹ PIXL is the Exchange’s price improvement mechanism known as Price Improvement XL or (PIXLSM).

²⁰ 15 U.S.C. 78f(b).

6(b)(4) of the Act²¹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Select Symbols

The Exchange believes that it is reasonable to remove the Proposed Deleted Symbols from its list of Select Symbols to attract additional order flow to the Exchange. The Exchange believes that applying the fees in Section II of the Pricing Schedule to the Proposed Deleted Symbols, including the opportunity to receive payment for order flow, will continue to attract order flow to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to remove the Proposed Deleted Symbols because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the rebates and fees in Section I of the Pricing Schedule, which would not include the Proposed Deleted Symbols. Also, all market participants would be uniformly subject to the fees and Customer Rebate Program in Section II, which would include the Proposed Deleted Symbols.

Section I - Fee Amendments

The Exchange believes its proposal to amend the Specialist and Market Maker Fees for Removing Liquidity in Section I, Part A from \$0.38 per contract to \$0.39 per contract is reasonable, equitable and not unfairly discriminatory because the Exchange

²¹ 15 U.S.C. 78f(b)(4).

would assess Specialists and Market Makers the same Fee for Removing Liquidity as a Customer. The Exchange notes that Specialists and Market Makers are assessed lower Options Transaction Charges as compared to other market participants, except Customers, because they have burdensome quoting obligations²² to the market which do not apply to Customers, Professionals, Firms and Broker-Dealers. The proposed differentiation as between Customers, Specialists and Market Makers as compared to Professionals, Firms and Broker-Dealers recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. The Exchange believes that the increased fees better align the Fees for Removing Liquidity by assessing Customers the same fee as a Specialist and Market Maker.

Section II - Electronic Firm Fee Discount

The Exchange's proposal to increase the fee thereby decrease the Electronic Firm Fee Discount for both electronic Penny Pilot and non-Penny Pilot Options from \$0.11 per contract to \$0.13 per contract is reasonable because the amendment would enable the Exchange to reward market participants that directed Customer orders to the Exchange by paying rebates as proposed herein, which in turn benefits all market participants.

The Exchange believes decreasing the Electronic Firm Fee Discount for both electronic Penny Pilot and non-Penny Pilot Options from \$0.11 per contract to \$0.13 per contract is equitable and not unfairly discriminatory because the Exchange is continuing to incentivize Firms by providing the ability to significantly lower fees and also earn

²² See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

rebates in the Customer Rebate Program. All Firms will continue to have an opportunity to qualify for a lower fee provided they achieve the requisite volume. The Exchange believes this Electronic Firm Fee Discount will continue to act as an incentive to attract electronic Firm volume to the Exchange.

QCC Rebate

The Exchange believes that its proposal to cap the QCC Rebate at \$275,000 per month is reasonable because the Exchange is proposing to provide other incentives in Section II to attract volume. Also, this cap, while limiting the amount of rebate that a market participant would receive for transacting a certain amount of QCC volume, will continue to incentivize market participants to seek to obtain the highest rebate possible. The Exchange believes that its proposal to cap the QCC Rebate at \$275,000 per month is equitable and not unfairly discriminatory because all market participants would be uniformly capped at \$275,000 per month.

Elimination of Rebate

The Exchange's proposal to eliminate the \$0.07 per contract rebate for 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 and the additional rebate of \$0.03 per contract for electronically-delivered Customer orders that qualified for the \$0.07 rebate are reasonable because the elimination of these rebates will enable the Exchange to reward market participants that add liquidity to the Exchange with the proposed Customer Rebate Program and in turn benefit all market participants.

The elimination of the two-tiered rebate is equitable and not unfairly discriminatory because it would be uniformly eliminated and unavailable to all market participants. In addition, the Customer Rebate Program would be available to these market participants.

Customer Rebate

The Exchange's adoption of a Customer Rebate Program in Section II of the Pricing Schedule is reasonable because the Exchange is seeking to incentivize members to route Multiply-Listed electronically-delivered Customer orders to the Exchange, with the exception of electronic QCC Orders. The Exchange believes that the proposed Volume Thresholds are reasonable because the Exchange believes that the thresholds are attainable to members desiring to increase their volume to achieve certain rebates and also bring greater Customer liquidity to the Exchange. By incentivizing members to route Customer orders, the Exchange desires to attract Customer orders which benefits all market participants by increasing liquidity on the Exchange. Other exchanges employ incentive programs.²³ The Exchange believes that its proposed volume thresholds and rates will be competitive as compared to rebate structures at other exchanges and attract order flow to the Exchange.

The Exchange also believes that it is reasonable to base rebates not only on volume but on the type of order by creating three categories, A, B and C, which specify

²³ See the Chicago Board Options Exchange, Incorporated's ("CBOE") Fees Schedule. CBOE offers each Trading Permit Holder ("TPH") a credit for each public customer order transmitted by the TPH which is executed electronically in all multiply-listed option classes, excluding QCC trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan, provided the TPH meets certain volume thresholds in a month (Volume Incentive Program).

the type of order that is eligible for certain rebates within each volume tier or Threshold. The Exchange is not only seeking to incentivize volume in Multiply-Listed Options but also seeks to incentivize market participants to transact certain types of Simple and Complex Orders in both Penny Pilot and non-Penny Pilot Options. The Exchange believes that the proposed calculation of the Volume Threshold, totaling all Multiply-Listed electronically delivered Customer volume, is reasonable because the Exchange believes that too will incentivize members to route Multiply-Listed electronically-delivered Customer orders to the Exchange, with the exception of electronic QCC Orders (eQCC Orders). The Exchange believes that its proposal to exclude electronic QCC Orders (eQCC Orders) from the Threshold calculation is reasonable because QCC has its own rebate schedule. Finally, the Exchange believes that excluding PIXL from the rebates is reasonable because the Exchange is not seeking to incentivize members to transact PIXL Orders. Also, today PIXL Orders and QCC Orders are not eligible for the rebate and are excluded from the calculation of the average daily volume. The Exchange assesses PIXL Orders its own fees as set forth in Section IV, Part A of the Pricing Schedule. Certain rebates are available for PIXL Orders as noted in that section of the Pricing Schedule.

The Exchange also believes the proposed Customer Rebate Program is equitable and not unfairly discriminatory because all market participants are eligible to receive a rebate provided they meet both the volume and order type requirements. The Exchange believes that incentivizing members to direct Customer order flow to the Exchange will provide all market participants an opportunity to interact with that order flow. Also, the Exchange believes it is equitable and not unfairly discriminatory to base rebates not only

on volume but on the type of orders because the Exchange would uniformly apply the rebates to all market participants by order type. The Exchange currently offers no rebate for Tier 1 (between 0 and 49,999 contracts in a month). The Exchange currently offers a rebate of \$0.07 per contract to members that execute electronically-delivered Customer orders (Simple or Complex) when transacting an average daily volume of 50,000 contracts.²⁴ This is similar to the Category A rebate in Tier 2 (50,000 to 99,999 contracts in a month) of \$0.07 per contract. Further, Categories B²⁵ and C²⁶ in Tier 2 would receive a \$0.10 per contract rebate similar to today. The Exchange currently pays an additional rebate of \$0.03 per contract to members for electronically-delivered Customer orders that qualified for the \$0.07 rebate and added liquidity in a Simple Order in a non-Penny Pilot or added or removed liquidity in a Complex Order in a Penny Pilot Option for a total rebate of \$0.10 per contract. With respect to Tier 3 (over 100,000 contracts in a month), the Exchange would pay an increased rebate of \$0.09 per contract to members that qualify for Category A (today those members receive a \$0.07 per contract rebate). Members that qualify for Category B would receive an increased rebate of \$0.12 per contract (today those members receive a \$0.10 per contract rebate). Members that qualify for Category C would receive the same \$0.10 per contract rebate as today. In

²⁴ The Exchange is proposing to pay a \$0.07 rebate to members that qualify for a Category A, Tier 2 rebate for electronically-delivered Customer Simple Orders in Penny Pilot Options, Simple Orders in Non-Penny Pilot Options that remove liquidity and Complex Orders in Non-Penny Pilot Options.

²⁵ A Category B rebate will be paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options.

²⁶ A Category C rebate will be paid to members executing electronically-delivered Customer Simple Orders in Non-Penny Pilot Options that add liquidity.

assessing the threshold categories and rates for rebates, the Exchange proposed rebates that it believes are competitive in light of other rebate structures offered today at other options exchanges.

The Exchange believes that the proposed calculation of the Volume Threshold, totaling all Multiply-Listed electronically delivered Customer volume, is equitable and not unfairly discriminatory because the calculation of the Volume Threshold would be uniformly applied to all market participants. The Exchange believes that its proposal to exclude electronic QCC Orders (eQCC Orders) from the Threshold calculation is equitable and not unfairly discriminatory because no rebate would be paid on QCC Orders as a result of their exclusion from this section, but this would not impact the ability to obtain a rebate for QCC Orders as per the QCC Rebate schedule. Finally, the Exchange believes that excluding PIXL Orders from the rebates is equitable and not unfairly discriminatory because the Exchange would uniformly allow market participants to count PIXL Orders in the Volume Threshold but would uniformly not pay rebates on those orders.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to only offer rebates for Customer orders and not to other market participants. Customer order flow brings unique benefits to the marketplace in terms of liquidity and order interaction. It is an important Exchange function to provide an opportunity to all market participants to trade against Customer orders.

Section II Monthly Market Cap

The Exchange's proposal to increase the current fee applicable to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed

Customer order and have reached the Monthly Market Maker Cap from \$0.07 to \$0.12 per contract is reasonable because it would enable the Exchange to offer the proposed Customer Rebate Program to market participants that direct Customer orders to the Exchange and in turn benefits all market participants.

The proposed increase to the current fee applicable to Specialists and Market Makers that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Market Maker Cap from \$0.07 to \$0.12 per contract is equitable and not unfairly discriminatory because this fee would be uniformly applied to all Specialists and Market Makers that qualified for the Cap and are on the contra-side of an electronically-delivered and executed Customer order. The Exchange recently amended the Monthly Firm Fee Cap to only apply to non-electronic equity options transaction fees. A Specialist or Market Maker is able to qualify for the Monthly Market Maker Cap without such a limitation as is currently applied to the Monthly Firm Fee Cap. There is no corresponding fee for the Monthly Firm Fee Cap because fees from electronically-delivered and executed volume are not included in the Monthly Firm Fee Cap and therefore the Exchange does not need to implement a similar fee to cover the cost of offering rebates for electronically-delivered and executed Customer volume.

Miscellaneous

The Exchange's proposal to amend the title of Part A from "Single contra-side" to "Simple Order" is reasonable, equitable and not unfairly discriminatory because the Exchange believes the caption "Simple Orders" more accurately describes the types of orders subject to the fees and rebates in Section I, Part A of the Pricing Schedule. This amendment is merely technical in nature and does not impact pricing.

The Exchange operates in a highly competitive market, comprised of ten 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. To the contrary, the Exchange believes that incentivizing members with a Customer Rebate Program and increasing other fees to allow the Exchange to offer competitive rebates will attract Customer liquidity to the Exchange and benefit all market participants.

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.²⁷ 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

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2012-90 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-2012-90. 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-2012-90 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.²⁸

Kevin M. O'Neill
Deputy Secretary

²⁸ 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

Select Symbols shall be defined as options overlying the following symbols: AA, [ABX], AMD, BAC, CSCO, DELL, DIA, [EBAY], EEM, EFA, EWZ, F, FAS, FAZ, FXI, GDX, GE, GLD, [GLW], INTC, IWM, MSFT, NEM, NOK, ORCL, PFE, [PG], [POT], QQQ, RIMM, [SBUX], SDS, SIRI, SLV, [SNDK], SPY, TBT, TLT, TZA, [UAL], UNG, USO, VALE, VXX, VZ, XLE, XLF, XLI, and YHOO. The following fees in this Section I shall only apply to Select Symbols.

Part A. [Single contra-side]Simple Order

	Customer	Specialist	Market Maker	Firm	Broker- Dealer	Professional
Rebate for Adding Liquidity	\$0.26	\$0.23	\$0.23	\$0.00	\$0.00	\$0.23
Fees for Adding Liquidity	\$0.00	\$0.00	\$0.00	\$0.05	\$0.05	\$0.00
Fee for Removing Liquidity	\$0.39	\$0.[38]39	\$0.[38]39	\$0.45	\$0.45	\$0.45

II. Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed⁹)

	Customer Professional		Specialist and Market Maker		Broker-Dealer		Firm	
			Non-Electronic	Electronic	Non-Electronic	Electronic	Non-Electronic	Electronic
Options Transaction Charge (Penny Pilot)	\$0.00	\$0.25	\$0.22	\$0.25	\$0.45	\$0.25	\$0.40	\$0.25
Options Transaction Charge (non-Penny Pilot)	\$0.00	\$0.25	\$0.23	\$0.25	\$0.60	\$0.25	\$0.45	\$0.25
Options Surcharge in RUT, MNX and NDX	N/A	\$0.15	\$0.15	\$0.15	\$0.15	\$0.15	\$0.15	\$0.15
Options Surcharge in BXX	N/A	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10
FLEX Options	\$0.00	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10
Cabinet Options	\$0.00	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10

• These fees are per contract.

⁹The 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 \$0.1[1]3 per contract for a given month provided that a Firm has volume greater than 750,000 electronically-delivered contracts in a month ("Electronic Firm Fee Discount"). The Electronic Firm Fee Discount will apply per member organization when such members are trading in their own proprietary account.

• QCC Transaction Fees for a Specialist, 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, will be paid for all qualifying executed QCC Orders, 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).

QCC Rebate Schedule

Threshold	Rebate per Contract
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 maximum QCC Rebate to be paid in a given month will not exceed \$275,000.

[• 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: 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. PIXL Orders and QCC Orders are not eligible for the rebate and are excluded from the calculation of the average daily volume]

Customer Rebate Program

<u>Average Daily Volume Threshold</u>	<u>Rebate per Contract Categories</u>		
	<u>Category A</u>	<u>Category B</u>	<u>Category C</u>
<u>0 to 49,999 contracts in a month</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>50,000 to 99,999 contracts in a month</u>	<u>\$0.07</u>	<u>\$0.10</u>	<u>\$0.10</u>
<u>Over 100,000 contracts in a month</u>	<u>\$0.09</u>	<u>\$0.12</u>	<u>\$0.10</u>

Category A: Rebate will be paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options, Simple Orders in Non-Penny Pilot Options that remove liquidity and Complex Orders in Non-Penny Pilot Options.

Category B: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options.

Category C: Rebate will be paid to members executing electronically-delivered Customer Simple Orders in Non-Penny Pilot Options that add liquidity.

The Average Daily Volume Threshold will be calculated by totaling Customer volume in Multiply Listed Options that are electronically-delivered, except electronic QCC Orders as defined in Exchange Rule 1080(o)

(“Threshold Volume”). Rebates will be paid on Threshold Volume in a given month, excluding electronically-delivered Customer volume associated with PIXL.

• Specialists and 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 Specialist and 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, Specialists and 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 \$0.0[7]12 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 Specialist and 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 Specialist and Market Maker has reached the Monthly Market Maker Cap. The Service Fee will not be assessed to a Specialist and Market Maker that does not reach the Monthly Market Maker Cap in a particular calendar month.

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