

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ OMX PHLX LLC.
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) <input type="checkbox"/>	Section 3C(b)(2) <input type="checkbox"/>
Section 806(e)(2) <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 action (limit 250 characters, required when Initial is checked *).
 Relating to Firm Fees

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

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.
 (Title *)
 Date 01/25/2013 Executive Vice President and General Counsel
 By Edward S. Knight Edward S Knight,
 (Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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 *

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies

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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, security-based swap submission, or advance notice 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

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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 Section II of the Pricing Schedule entitled “Multiply Listed Options Fees”³ to amend fees applicable to a Firm. The Exchange also proposes to make a technical amendment to Section VI entitled “Membership Fees.”

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on February 1, 2013.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on July 10, 2012. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Multiply Listed Options includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

Questions and comments on the proposed rule change may be directed to Angela Saccomandi Dunn, Associate General Counsel, at (215) 496-5692.

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

a. Purpose

The purpose of this filing is to increase certain fees applicable to Firms in Section II of the Pricing Schedule to more closely align the electronic Firm Penny Pilot Options⁴ Transaction Charge with other fees in Sections II of the Pricing Schedule.

Currently, the Exchange assesses Firm Options Transaction Charges in Penny Pilot Options as follows: \$0.40 per contract for an electronic order and \$0.25 per contract for an order originating from the Exchange floor. The Exchange assesses Firm Options

⁴ The Penny Pilot was established in January 2007; and in October 2009, it was expanded and extended through June 30, 2013. 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); 67326 (June 29, 2012), 77 FR 40126 (July 6, 2012) (SR-Phlx-2012-86) (notice of filing and immediate effectiveness extending the Penny Pilot); and 68534 (December 21, 2012), 77 FR 77174 (December 31, 2012) (notice of filing and immediate effectiveness extending the Penny Pilot). See also Exchange Rule 1034.

Transaction Charges in non-Penny Pilot Options⁵ as follows: \$0.45 per contract for an electronic order and \$0.25 per contract for an order originating from the Exchange floor. The Exchange proposes to increase the electronic Firm Options Transaction Charge in Penny Pilot Options from \$0.40 to \$0.44 per contract.

Currently, the Exchange reduces electronic Firm Options Transaction Charges in Penny Pilot and non-Penny Pilot Options to \$0.13 per contract and \$0.00 per contract for electronic Complex Orders that add liquidity for a given month provided that a Firm has volume greater than 600,000 electronically-delivered contracts in a month (“Electronic Firm Fee Discount”). The Exchange proposes to reduce electronic Firm Options Transaction Charges in Penny Pilot and non-Penny Pilot Options, including electronic Complex Orders that add liquidity,⁶ to \$0.17 per contract⁷ if a Firm meets the volume requirement of the Electronic Firm Fee Discount. Finally, the Exchange proposes to amend the Firm volume requirement for the Electronic Firm Fee Discount by lowering it from 600,000 electronically-delivered contracts to 500,000 electronically-delivered contracts.

The Exchange also proposes to amend Section VI, Part A of the Pricing Schedule entitled “Permit and Registration Fees” to make a technical amendment to correct the text of the Pricing Schedule. The Exchange amended the Permit Fees on January 2, 2013 to

⁵ Non-Penny Pilot refers to options classes not in the Penny Pilot.

⁶ Today, a Firm that qualifies for the Electronic Firm Fee Discount would not be assessed an Options Transaction Charge for electronic Complex Orders that add liquidity because they are entitled to a fee reduction to \$0.00 per contract.

⁷ Today, a Firm that qualifies for the Electronic Firm Fee Discount would not be assessed a charge for electronic Complex Orders that add liquidity. Pursuant to this proposal, a Firm would be assessed \$0.17 per contract for electronic Complex Orders that add liquidity.

increase the Permit Fee for Phlx Members transacting business on Phlx from \$2,000 to \$2,100 per month.⁸ At that time, the Exchange inadvertently did not also update the paragraph explaining how a member qualifies for the lower Permit Fee. The Exchange proposes to update the Pricing Schedule to reflect the Permit Fee for Phlx Members transacting business on Phlx is \$2,100 in note 15 which accompanies the Permit Fee to update and clarify the Pricing Schedule.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁰ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that increasing the Firm Options Transaction Charge from \$0.40 to \$0.44 per contract is reasonable because this fee is within the range of other fees in Section II of the Pricing Schedule. The Exchange currently assesses an electronic Firm Options Transaction Charge in non-Penny Pilot Options of \$0.45 per contract and an electronic Broker-Dealer Options Transaction Charge in Penny Pilot Options of \$0.45 per contract. The Exchange generally assesses lower fees for Penny Pilot Options as compared to non-Penny Pilot Option because those securities are among the most

⁸ See Securities Exchange Act Release No. 68473 (December 19, 2012), 77 FR 76128 (December 19, 2012) (SR-Phlx-2012-140).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

actively traded and liquid options. This is the case today for Specialist, Market Maker and Broker-Dealer Fees.¹¹

The Exchange believes that increasing the Firm Options Transaction Charge from \$0.40 to \$0.44 per contract is equitable and not unfairly discriminatory for the reasons which follow. Firms will continue to be assessed a higher fee than a Customer who pays no fee to transact electronic Penny Pilot Options. Customer order flow brings unique benefits to the market which benefits all market participants through increased liquidity. Similarly, Firms will continue to be assessed higher fees than Specialists¹² and Market Makers¹³ in electronic Penny Pilot Options¹⁴ because Specialists and Market Makers have obligations to the market and regulatory requirements,¹⁵ which normally do not apply to other market participants. They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a

¹¹ The Exchange assesses an electronic Specialist and Market Maker Options Transaction Charge in Penny Pilot Options of \$0.22 per contract as compared to an electronic Specialist and Market Maker Options Transaction Charge in non-Penny Pilot Options of \$0.23 per contract. The Exchange assesses an electronic Broker Dealer Options Transaction Charge in Penny Pilot Options of \$0.45 per contract as compared to an electronic Broker Dealer Options Transaction Charge in non-Penny Pilot Options of \$0.60 per contract.

¹² A “Specialist” is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

¹³ A “Market Maker” includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (see Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

¹⁴ Specialists and Market Maker pay \$0.22 per contract to transact electronic Penny Pilot Options.

¹⁵ See Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between Customers, Specialists and Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants, as well as the differing mix of orders entered. Broker-Dealers and Firms today pay higher fees as compared to a Professional¹⁶ for electronic Penny Pilot Options transactions and this would not change. With respect to Professionals, they have access to more information and technological advantages as compared to Customers and Professionals do not bear the obligations of Specialists or Market Makers. Also, Professionals engage in trading activity similar to that conducted by Specialists or Market Makers. For example, Professionals continue to join bids and offers on the Exchange and thus compete for incoming order flow. For these reasons, the Exchange believes that Professionals may be priced higher than a Customer and may be priced equal to or higher than a Specialist or Market Maker. Finally, the Firm will continue to be assessed a lower fee as compared to a Broker-Dealer. The Exchange believes that increasing the Firm electronic Penny Pilot Options Transaction Charge to \$0.44 per contract does not misalign the current rate differentials between a Broker-Dealer and a Firm because the Exchange is narrowing the differential to \$.01 per contract. Further, the Exchange is increasing the discounted fee for Firms that qualify for the Electronic Firm Fee Discount for all electronic orders, including electronic Complex Orders that add liquidity, to \$0.17

¹⁶ The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

per contract. This will also serve to further align the rate differentials as between a Broker-Dealer and a Firm.

The Exchange believes that it is reasonable to decrease the Electronic Firm Fee Discount for electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options from \$0.13 to \$0.17 per contract, decrease the fee deduction for Firm electronic Complex Orders that add liquidity from no fee to \$0.17 per contract and decrease the Firm volume requirement from 600,000 to 500,000 electronically-delivered contracts because the Exchange is continuing to offer Firms discounts if they qualify for the Electronic Firm Fee Discount. By decreasing the Firm volume requirement from 600,000 to 500,000 electronically-delivered contracts, the Exchange believes that additional market participants transacting Firm orders would be able to qualify for the discount. Despite the increase to the Firm electronic Penny Pilot Options Transaction Charge, the Exchange believes the amendments to the Electronic Firm Fee Discount should continue to attract electronic Firm volume to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to decrease the Electronic Firm Fee Discount for electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options from \$0.13 to \$0.17 per contract, decrease the fee deduction for Firm electronic Complex Orders that add liquidity from no fee to \$0.17 per contract and decrease the Firm volume requirement from 600,000 to 500,000 electronically-delivered contracts for the Electronic Firm Fee Discount because all Firms will continue to have an opportunity to qualify for this incentive as they do today, provided they achieve the requisite volume. The Exchange also believes that the increased opportunity to obtain the Electronic Firm Fee Discount, because of the reduced

volume requirement, will assist Firms to offset the increased Firm fee proposed herein.

While the Exchange is decreasing the discount (from no charge to \$0.17 per contract) on Firm electronic Complex Orders that add liquidity, the Exchange believes that reducing the discount for all Firm electronic Penny Pilot and non-Penny Pilot Options Transaction Charges by the same amount is equitable and not unfairly discriminatory.

Finally, the Exchange believes that the technical amendment to Section VI of the Pricing Schedule to amend the reference to the Permit Fee for Phlx Members transacting business on Phlx is reasonable, equitable and not unfairly discriminatory because the proposed amendment should clarify the incorrect text on the Pricing Schedule and provide consistent information in that section of the Pricing Schedule.

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. The Exchange believes that increasing the electronic Firm Penny Pilot Options Transaction Charge does not misalign the pricing in Section II as between the market participants. The Firm electronic Options Transaction Charges in Penny Pilot Options would continue to be higher than Customer fees, electronic Professional fees and electronic Specialist and Market Maker fees in Penny Pilot Options. Additionally, the increased Firm fee narrows the differential as between Firms and Broker-Dealers. Further, the Exchange is offsetting the Firm fee increase with an increased opportunity to obtain the Electronic Firm Fee Discount of \$0.17 per contract by decreasing the Firm volume requirement. The increased Firm discount of \$0.17 per contract applies equally to all Firms. The Exchange does not believe that any of the proposed amendments

impose a burden on competition as between market participants. The Exchange proposes to balance an increased fee applicable only to Firms with an increased opportunity for Firms to benefit from a discount.

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

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,¹⁷ 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

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. 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-2013-10)

Self-Regulatory Organizations: NASDAQ OMX PHLX LLC Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend certain fees in Section II of the Pricing Schedule

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 January 25, 2013, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section II of the Pricing Schedule entitled “Multiply Listed Options Fees”³ to amend fees applicable to a Firm. The Exchange also proposes to make a technical amendment to Section VI entitled “Membership Fees.”

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on February 1, 2013.

The text of the proposed rule change is provided in Exhibit 5. The text of the proposed rule change is also available on the Exchange’s Website at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Multiply Listed Options includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

<http://nasdaqomxphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The purpose of this filing is to increase certain fees applicable to Firms in Section II of the Pricing Schedule to more closely align the electronic Firm Penny Pilot Options⁴ Transaction Charge with other fees in Sections II of the Pricing Schedule.

⁴ The Penny Pilot was established in January 2007; and in October 2009, it was expanded and extended through June 30, 2013. 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); 67326 (June 29,

Currently, the Exchange assesses Firm Options Transaction Charges in Penny Pilot Options as follows: \$0.40 per contract for an electronic order and \$0.25 per contract for an order originating from the Exchange floor. The Exchange assesses Firm Options Transaction Charges in non-Penny Pilot Options⁵ as follows: \$0.45 per contract for an electronic order and \$0.25 per contract for an order originating from the Exchange floor. The Exchange proposes to increase the electronic Firm Options Transaction Charge in Penny Pilot Options from \$0.40 to \$0.44 per contract.

Currently, the Exchange reduces electronic Firm Options Transaction Charges in Penny Pilot and non-Penny Pilot Options to \$0.13 per contract and \$0.00 per contract for electronic Complex Orders that add liquidity for a given month provided that a Firm has volume greater than 600,000 electronically-delivered contracts in a month (“Electronic Firm Fee Discount”). The Exchange proposes to reduce electronic Firm Options Transaction Charges in Penny Pilot and non-Penny Pilot Options, including electronic Complex Orders that add liquidity,⁶ to \$0.17 per contract⁷ if a Firm meets the volume requirement of the Electronic Firm Fee Discount. Finally, the Exchange proposes to

2012), 77 FR 40126 (July 6, 2012) (SR-Phlx-2012-86) (notice of filing and immediate effectiveness extending the Penny Pilot); and 68534 (December 21, 2012), 77 FR 77174 (December 31, 2012) (notice of filing and immediate effectiveness extending the Penny Pilot). See also Exchange Rule 1034.

⁵ Non-Penny Pilot refers to options classes not in the Penny Pilot.

⁶ Today, a Firm that qualifies for the Electronic Firm Fee Discount would not be assessed an Options Transaction Charge for electronic Complex Orders that add liquidity because they are entitled to a fee reduction to \$0.00 per contract.

⁷ Today, a Firm that qualifies for the Electronic Firm Fee Discount would not be assessed a charge for electronic Complex Orders that add liquidity. Pursuant to this proposal, a Firm would be assessed \$0.17 per contract for electronic Complex Orders that add liquidity.

amend the Firm volume requirement for the Electronic Firm Fee Discount by lowering it from 600,000 electronically-delivered contracts to 500,000 electronically-delivered contracts.

The Exchange also proposes to amend Section VI, Part A of the Pricing Schedule entitled “Permit and Registration Fees” to make a technical amendment to correct the text of the Pricing Schedule. The Exchange amended the Permit Fees on January 2, 2013 to increase the Permit Fee for Phlx Members transacting business on Phlx from \$2,000 to \$2,100 per month.⁸ At that time, the Exchange inadvertently did not also update the paragraph explaining how a member qualifies for the lower Permit Fee. The Exchange proposes to update the Pricing Schedule to reflect the Permit Fee for Phlx Members transacting business on Phlx is \$2,100 in note 15 which accompanies the Permit Fee to update and clarify the Pricing Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁰ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that increasing the Firm Options Transaction Charge from \$0.40 to \$0.44 per contract is reasonable because this fee is within the range of other fees

⁸ See Securities Exchange Act Release No. 68473 (December 19, 2012), 77 FR 76128 (December 19, 2012) (SR-Phlx-2012-140).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

in Section II of the Pricing Schedule. The Exchange currently assesses an electronic Firm Options Transaction Charge in non-Penny Pilot Options of \$0.45 per contract and an electronic Broker-Dealer Options Transaction Charge in Penny Pilot Options of \$0.45 per contract. The Exchange generally assesses lower fees for Penny Pilot Options as compared to non-Penny Pilot Option because those securities are among the most actively traded and liquid options. This is the case today for Specialist, Market Maker and Broker-Dealer Fees.¹¹

The Exchange believes that increasing the Firm Options Transaction Charge from \$0.40 to \$0.44 per contract is equitable and not unfairly discriminatory for the reasons which follow. Firms will continue to be assessed a higher fee than a Customer who pays no fee to transact electronic Penny Pilot Options. Customer order flow brings unique benefits to the market which benefits all market participants through increased liquidity. Similarly, Firms will continue to be assessed higher fees than Specialists¹² and Market Makers¹³ in electronic Penny Pilot Options¹⁴ because Specialists and Market Makers

¹¹ The Exchange assesses an electronic Specialist and Market Maker Options Transaction Charge in Penny Pilot Options of \$0.22 per contract as compared to an electronic Specialist and Market Maker Options Transaction Charge in non-Penny Pilot Options of \$0.23 per contract. The Exchange assesses an electronic Broker Dealer Options Transaction Charge in Penny Pilot Options of \$0.45 per contract as compared to an electronic Broker Dealer Options Transaction Charge in non-Penny Pilot Options of \$0.60 per contract.

¹² A “Specialist” is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

¹³ A “Market Maker” includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (see Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

have obligations to the market and regulatory requirements,¹⁵ which normally do not apply to other market participants. They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between Customers, Specialists and Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants, as well as the differing mix of orders entered. Broker-Dealers and Firms today pay higher fees as compared to a Professional¹⁶ for electronic Penny Pilot Options transactions and this would not change. With respect to Professionals, they have access to more information and technological advantages as compared to Customers and Professionals do not bear the obligations of Specialists or Market Makers. Also, Professionals engage in trading activity similar to that conducted by Specialists or Market Makers. For example, Professionals continue to join bids and offers on the Exchange and thus compete for incoming order flow. For these reasons, the Exchange believes that Professionals may be priced higher than a Customer and may be priced equal to or higher than a Specialist or Market Maker. Finally, the Firm will continue to be assessed a lower fee as compared to a Broker-Dealer. The Exchange believes that increasing the Firm

¹⁴ Specialists and Market Maker pay \$0.22 per contract to transact electronic Penny Pilot Options.

¹⁵ See Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

¹⁶ The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

electronic Penny Pilot Options Transaction Charge to \$0.44 per contract does not misalign the current rate differentials between a Broker-Dealer and a Firm because the Exchange is narrowing the differential to \$.01 per contract. Further, the Exchange is increasing the discounted fee for Firms that qualify for the Electronic Firm Fee Discount for all electronic orders, including electronic Complex Orders that add liquidity, to \$0.17 per contract. This will also serve to further align the rate differentials as between a Broker-Dealer and a Firm.

The Exchange believes that it is reasonable to decrease the Electronic Firm Fee Discount for electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options from \$0.13 to \$0.17 per contract, decrease the fee deduction for Firm electronic Complex Orders that add liquidity from no fee to \$0.17 per contract and decrease the Firm volume requirement from 600,000 to 500,000 electronically-delivered contracts because the Exchange is continuing to offer Firms discounts if they qualify for the Electronic Firm Fee Discount. By decreasing the Firm volume requirement from 600,000 to 500,000 electronically-delivered contracts, the Exchange believes that additional market participants transacting Firm orders would be able to qualify for the discount. Despite the increase to the Firm electronic Penny Pilot Options Transaction Charge, the Exchange believes the amendments to the Electronic Firm Fee Discount should continue to attract electronic Firm volume to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to decrease the Electronic Firm Fee Discount for electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options from \$0.13 to \$0.17 per contract, decrease the fee deduction for Firm electronic Complex Orders that add liquidity from no fee to \$0.17

per contract and decrease the Firm volume requirement from 600,000 to 500,000 electronically-delivered contracts for the Electronic Firm Fee Discount because all Firms will continue to have an opportunity to qualify for this incentive as they do today, provided they achieve the requisite volume. The Exchange also believes that the increased opportunity to obtain the Electronic Firm Fee Discount, because of the reduced volume requirement, will assist Firms to offset the increased Firm fee proposed herein. While the Exchange is decreasing the discount (from no charge to \$0.17 per contract) on Firm electronic Complex Orders that add liquidity, the Exchange believes that reducing the discount for all Firm electronic Penny Pilot and non-Penny Pilot Options Transaction Charges by the same amount is equitable and not unfairly discriminatory.

Finally, the Exchange believes that the technical amendment to Section VI of the Pricing Schedule to amend the reference to the Permit Fee for Phlx Members transacting business on Phlx is reasonable, equitable and not unfairly discriminatory because the proposed amendment should clarify the incorrect text on the Pricing Schedule and provide consistent information in that section of the Pricing Schedule.

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. The Exchange believes that increasing the electronic Firm Penny Pilot Options Transaction Charge does not misalign the pricing in Section II as between the market participants. The Firm electronic Options Transaction Charges in Penny Pilot Options would continue to be higher than Customer fees, electronic Professional fees and electronic Specialist and Market Maker fees in Penny Pilot Options. Additionally, the

increased Firm fee narrows the differential as between Firms and Broker-Dealers. Further, the Exchange is offsetting the Firm fee increase with an increased opportunity to obtain the Electronic Firm Fee Discount of \$0.17 per contract by decreasing the Firm volume requirement. The increased Firm discount of \$0.17 per contract applies equally to all Firms. The Exchange does not believe that any of the proposed amendments impose a burden on competition as between market participants. The Exchange proposes to balance an increased fee applicable only to Firms with an increased opportunity for Firms to benefit from a discount.

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

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.¹⁷ 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

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2013-10 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-2013-10. 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-2013-10 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.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

NASDAQ OMX PHLX LLC¹ PRICING SCHEDULE

* * * * *

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

	Customer	Professional	Specialist and Market Maker	Broker-Dealer	Firm	Electronic Floor	Electronic Floor	Electronic Floor	Electronic Floor
Options Transaction Charge (Penny Pilot)	\$0.00	\$0.30	\$0.25	\$0.22	\$0.25	\$0.45	\$0.25	\$0.4[0]4	\$0.25
Options Transaction Charge (non-Penny Pilot)	\$0.00	\$0.30	\$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	\$0.15
Options Surcharge in BKX	N/A	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10
FLEX Options	\$0.00	N/A	\$0.10	N/A	\$0.10	N/A	\$0.10	N/A	\$0.10
Cabinet Options	\$0.00	N/A	\$0.10	N/A	\$0.10	N/A	\$0.10	N/A	\$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[3]7 per contract [and \$0.00 for electronic Complex Orders that add liquidity] for a given month provided that a Firm has volume greater than [6]500,000 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.

* * * * *

VI. MEMBERSHIP FEES

A. Permit and Registration Fees

Permit Fees for Phlx Members (per month)^{14, 15}

Transacting business on Phlx	\$2,100 ¹⁶
Not transacting business on Phlx	\$7,500 ¹⁷

* * * * *

¹⁵A member or member organization will be assessed the \$2,[0]100 monthly Permit Fee if that member or member organization: (1) transacts its option orders in its assigned Phlx house account in a particular month; or (2) is a clearing member of The Options Clearing Corporation or a Floor Broker; or (3) for those member organizations which are under common ownership, transacts at least one options trade in a Phlx house account that is assigned to one of the member organizations under common ownership. For purposes of the Permit Fee, "common ownership" shall be defined as at least 75% common ownership between the member organizations.

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