

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

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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 Exchange’s Pricing Schedule at Section A, entitled “Customer Rebate Program.” The Exchange also proposes technical amendments to the Preface, Section I, entitled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols,” Section II, entitled “Multiply Listed Options Fees”³ and Section IV entitled “PIXL⁴ Pricing” of the Pricing Schedule.

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 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

⁴ PIXL is the Exchange’s price improvement mechanism known as Price Improvement XL or (PIXLSM). See Rule 1080(n).

rule change.

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

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

a. Purpose

The purpose of the proposed rule change is to amend the Customer Rebate Program to incentivize market participants to increase the amount of Customer order flow they transact on the Exchange. The Exchange also proposes to amend and add certain rule text in the Pricing Schedule to provide additional clarity to the Pricing Schedule.

Customer Rebate Program

Currently, the Exchange pays Customer Rebates by calculating an Average Daily Volume Threshold. The Exchange calculates the Average Daily Volume Threshold by totaling Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o) ("Threshold Volume"). Rebates are paid on Threshold Volume.

The Exchange is proposing to base the Customer Rebate Program on certain "Rebate Tiers." The Exchange proposes to replace the current three tier structure, which pays rebates based on the number of contracts transacted in a month based on four Categories (A, B, C and D) of transactions, with a four tier structure. The four tier structure would pay rebates based on percentage thresholds of national customer multiply-listed options volume by month based on the same four Categories (A, B, C and D) of transactions. Specifically, the Exchange would base a market participant's

qualification for a certain Rebate Tier on the percentage of total national customer volume in multiply-listed options which are transacted monthly on Phlx. The Exchange proposes to establish a four tier Customer rebate structure with a column entitled “Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly).” The Exchange proposes the following Customer Rebate Tiers by percentages:

Customer Rebate Tiers	Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly)	Category A	Category B	Category C	Category D
Tier 1	0.00% - 0.75%	\$0.00	\$0.00	\$0.00	\$0.00
Tier 2	Above 0.75% - 1.60%	\$0.11	\$0.12	\$0.13	\$0.08
Tier 3	Above 1.60% - 2.60%	\$0.13	\$0.13	\$0.14	\$0.08
Tier 4	Above 2.60%	\$0.15	\$0.15	\$0.15	\$0.09

The Exchange believes that replacing the current tiers which require market participants to qualify for Customer Rebates based on a certain number contracts transacted in a month with a tier structure based on relative contracts per month as a percentage of total national customer volume in multiply-listed options transacted on Phlx would serve to control and account for industry-wide movements.

The Exchange is not proposing to amend the criteria to qualify for a certain rebate

Category (A, B, C or D). These will remain the same pursuant to this proposal.⁵ In addition, the Exchange would continue to total Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o) in the same manner.⁶ The Exchange proposes to remove references to the Average Daily Volume Threshold and replace those references with Customer Rebate Tier references. The Exchange also proposes to permit members and member organizations under common ownership to aggregate their volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Common ownership, which the Exchange is proposing to define in the Preface to the Pricing Schedule as described in more detail below, shall mean 75% common ownership or control.

The Exchange is proposing to amend the rebates paid to market participants with this proposal. Currently, Categories A, B, C and D receive no rebate for volume between 0 to 99,999 contracts in a month. The Exchange proposes to pay Categories A, B, C and D no rebate with proposed Tier 1 which is between 0.00% to 0.75% of national customer volume in multiply-listed options classes. Currently, the Exchange pays the following

⁵ Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II. Rebates are paid on PIXL Orders in Section II symbols that execute against non-Initiating Order interest. Category B rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II. Category C rebates are paid to members executing electronically-delivered Customer Complex Orders in Select Symbols in Section I. Category D rebates will be paid to members executing electronically-delivered Customer Simple Orders in Select Symbols in Section I. Rebates are paid on PIXL Orders in Section I symbols that execute against non-Initiating Order interest.

⁶ For clarity, the Exchange will calculate volume and pay rebates based on a member organization's Phlx house account numbers.

rebates for Tier 2 volume which is between 100,000 and 349,999 contracts in a month: Category A: \$0.10, Category B: \$0.12, Category C: \$0.13 and Category D: \$0.05. The Exchange would pay the following rebates for new Tier 2 for a percentage of national customer volume in multiply-listed options classes above 0.75% to 1.60%: Category A: \$0.11, Category B: \$0.12, Category C: \$0.13 and Category D: \$0.08. Currently, the Exchange pays the following rebates for Tier 3 volume which is over 350,000 contracts in a month: Category A: \$0.15, Category B: \$0.15, Category C: \$0.15 and Category D: \$0.07. The Exchange would pay the following rebates for new Tier 3 for a percentage of national customer volume in multiply-listed options classes above 1.60% to 2.60%: Category A: \$0.13, Category B: \$0.13, Category C: \$0.14 and Category D: \$0.08. The Exchange would pay the following rebates for new Tier 4 for a percentage of national customer volume in multiply-listed options classes above 2.60%: Category A: \$0.15, Category B: \$0.15, Category C: \$0.15 and Category D: \$0.09. By way of example, a market participant that executes 3,000,000 electronically-delivered Customer Simple Order contracts in Select Symbols, which are Multiply Listed Options, in a given month where 150,000,000 national customer multiply-listed options contracts were executed would receive a credit of \$240,000. The market participant would have qualified for this rebate because the number of qualifying contracts⁷ executed on Phlx represents 2% of the total national customer multiply-listed options volume and because the Customers orders were Simple Orders in Select Symbols, the Category D rate in Tier 3 of \$0.08 per contract would be applied to the 3,000,000 Customer contracts.

Finally, today, member organizations qualifying for either a Tier 2 or Tier 3

⁷ Presuming the contracts are not electronic QCC Orders as defined in Rule 1080(o).

rebate are entitled to receive a credit of \$0.04 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to NASDAQ OMX BX, Inc. (“BX Options”) or the NASDAQ Options Market (“NOM”). Today, a member organization qualifying for either a Tier 2 or Tier 3 rebate is entitled to receive a credit of \$0.10 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if the Customer order is routed to an away market other than BX Options or NOM.

The Exchange proposes to amend the qualifying tiers from Tier 2 or 3 to Tiers 2, 3 or 4 to receive credits to the various away markets. The Exchange also proposes to amend the credit that will be paid per contract to \$0.10 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to NOM and \$0.05 per contract credit toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to BX Options. A member organization qualifying for a Tier 2, 3 or 4 rebate is entitled to a credit of \$0.16 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if the Customer order is routed to an away market other than BX Options or NOM, unless the away market transaction fee is \$0.00 or a rebate is paid by the away market, in which case the credit would be reduced to \$0.11 per contract. The Exchange believes that offering credits toward Routing Fees will continue to incentivize market participants to transact a greater number of Customer orders on the Exchange.

Technical Amendments

First, the Exchange utilizes the term “common ownership” throughout the Pricing Schedule and defines common ownership as 75% common ownership or control among

members and member organizations.⁸ The Exchange proposes to amend the Preface of the Pricing Schedule to define “Common Ownership” for purposes of pricing. The Exchange also proposes to revise Sections II, IV and VI of the Pricing Schedule to simply refer to the defined term “Common Ownership” and eliminate the definitions throughout the rule text which reflect the same 75% common ownership or control language.

Second, the Exchange proposes to amend Section I of the Pricing Schedule to add the words “Complex Order” prior to the language discussing the Pilot Program related to the \$0.05 per contract fee differential for Fees for Removing Liquidity for Specialists and Market Makers that transact against a Customer order directed to them. The Exchange received approval for a Pilot Program which commenced on December 1, 2012.⁹ The Exchange believes the addition of the words “Complex Order” further clarifies the Pricing Schedule. The fee differential for directed orders applies to Complex Orders and does not apply to Simple Orders.

Third, the Exchange proposes to amend the Section II Monthly Market Maker Cap rule text to specify that the Monthly Market Maker Cap applies to electronic and floor transactions. The Exchange proposes to remove the word “equity” from this paragraph as that word is not necessary. Also, the Exchange proposes to refer to Options Transaction Charges instead of “fees” in that same paragraph for consistency.

⁸ See Sections II, IV and VI of the Pricing Schedule.

⁹ See Securities Exchange Release No. 66884 (April 30, 2012), 77 FR 26595 (May 4, 2012) (SR-Phlx-2012-27 and SR-Phlx-2012-54). See also Securities Exchange Act Release No. 68376 (December 6, 2012), 77 FR 74039 (December 12, 2012) (SR-Phlx-2012-139).

Fourth, the Exchange proposes to remove the rule text describing the common ownership in Section IV because the Exchange has proposed herein to permit members and member organization under common ownership to aggregate Customer Rebate volume in Section A. The Exchange proposes to include rule text to permit any member or member organization under common ownership with another member or member organization that qualifies for a Customer Rebate Tier discount in Section A to receive the discounted PIXL Initiating Order discount as proposed herein. For example, if Phlx member A qualifies for a Tier 5 Customer Rebate pursuant to Section A of the Pricing Schedule, Phlx member B, an affiliate of member A and 75% commonly owned by the same parent, would be entitled to the discounted Initiating Order Fee of \$0.05 per contract. The Exchange would utilize the proposed defined term “Common Ownership” in this section.

Fifth, the Exchange proposes to clarify in Section IV of the Pricing Schedule that with respect to PIXL Order executions in Section I Select Symbols,¹⁰ the pricing specified in Section IV is in addition to other fees and rebates in Section I, including Payment for Order Flow fees where appropriate. The Exchange makes a similar statement in Section IV, Part A with respect to Section II PIXL fees and proposes this additional language for consistency and clarity.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section

¹⁰ Select Symbols are defined in Section I of the Pricing Schedule.

¹¹ 15 U.S.C. 78f(b).

6(b)(4) of the Act¹² in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Customer Rebate Program

The Exchange's proposal to convert the qualification for the rebate tiers from measuring a market participant's per month Average Daily Contract Volume to relative contracts per month based on national customer volume in multiply-listed options classes executed on Phlx is reasonable because it allows the Exchange to control and account for changes in the national industry-wide customer multiply-listed options volume. Further, it will still allow market participants to receive rebates on Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as is the case today. The Exchange believes that the amended Customer Rebate Program should incentivize market participants to increase the amount of Customer orders that are transacted on the Exchange to obtain a rebate. In addition, other exchanges employ similar incentive programs.¹³

The Exchange's proposal to convert the qualification for the rebate tiers from measuring a market participant's per month Average Daily Contract Volume to relative contracts per month based on national customer volume in multiply-listed options classes

¹² 15 U.S.C. 78f(b)(4).

¹³ 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 percentage thresholds in a month as described in the Volume Incentive Program.

executed on Phlx is equitable and not unfairly discriminatory because it will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the rebate provided they transact a qualifying amount of electronic Customer volume. The Exchange is merely amending the measuring stick that it utilized to determine the amount of qualifying volume. The Exchange would account for changes in industry-wide volume with the amendment.

The Exchange believes that amending the rebates offered in Categories A, B, C and D is reasonable because with respect to Tier 1, the Exchange would continue to not offer a rebate to market participants. The Exchange is also adding several new tiers which allow market participants the opportunity to achieve higher rebates in Category A and substantially the same and higher rebates in Categories B, C and D. With respect to Tiers 2, 3, and 4, the Exchange believes that it is providing market participants the opportunity to earn higher rebates. Proposed Tier 2 rebates are the same or higher than the Tier 2 rebates today. Proposed Tier 3 rebates are slightly lower than the current Tier 3 rebates. Proposed Tier 4 rebates are the same or higher than the current Tier 3 rebates, which today are the highest rebates that a market participant can achieve under the program. The Exchange is unable to specify with certainty which tier would apply to participants that are executing a certain amount of Customer volume today. The Exchange believes that the rebates proposed herein are reasonable because market participants may be able to obtain higher rebates beyond Tier 1 if they are able to qualify for a higher tier as compared to today's tiers with the proposed method of percentages of national customer volume.

The Exchange believes that amending the rebates offered in Categories A, B, C

and D is equitable and not unfairly discriminatory because the rebates will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the rebate provided they transact a qualifying amount of electronic Customer volume.

The Exchange believes that permitting members and member organizations to aggregate their volume if they are under common ownership, defined as 75% common ownership or control, is reasonable because the Exchange desires to provide all market participants the ability to obtain Customer Rebates. The Exchange believes that permitting members and member organizations to aggregate their volume if they are under common ownership is equitable and not unfairly discriminatory because the Exchange would permit all market participants the ability to aggregate for purposes of receiving the Customer Rebate even if certain members and member organizations chose to operate under separate entities. The Exchange currently permits such aggregation in the calculation of the Monthly Market Maker Cap and for purposes of PIXL fees.¹⁴

The Exchange's proposal to further reduce Routing Fees¹⁵ in Section V of the Exchange's Pricing Schedule for member organizations that qualify for Tiers 2, 3 or 4 in

¹⁴ See Section II of the Pricing Schedule. Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$550,000 for: (i) equity option transaction fees; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. 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. See also Section IV of the Pricing Schedule. For purposes of the PIXL Initiating Order members and member organizations under common ownership may aggregate their Customer Rebate Program volume.

¹⁵ Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative and technical costs associated with operating NOS that are assessed on the Exchange, membership fees at away markets, and technical costs

the Customer Rebate Program in Section A of the Pricing Schedule is reasonable because the Exchange proposes to provide an additional incentive for transacting Customer orders on the Exchange. By offering member organizations a credit toward the cost of routing to an away market, the Exchange is seeking to encourage market participants to transact a greater number of Customer orders on Phlx which liquidity benefits all market participants. In addition, the Exchange is offering the credit toward Customer Routing Fees in addition to the Customer rebate received for the qualifying Customer Rebate Tier.

The Exchange believes that providing a credit of \$0.10 per contract toward the Customer Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to NOM and a \$0.05 per contract credit toward the Customer Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to BX Options is equitable and not unfairly discriminatory because NOM does not pay a Customer Rebate to Remove Liquidity and BX Options pays a Rebate to Remove Liquidity.¹⁶ The Exchange believes that paying a \$0.16 per contract credit toward the Routing Fee specified in Section V of the Pricing Schedule if a member organization qualifies for a Tier 2, 3 or 4 rebate if the Customer order is routed to away market other than BX Options or NOM unless the away market transaction fee is \$0.00 or a rebate is paid by the away market, in which case \$0.11 per contract would be paid, is equitable and

associated with routing options. The Routing Fees enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of orders by the away market.

¹⁶ BX Options pays a \$0.32 per contract Customer Rebate to Remove Liquidity in Penny Pilot Options, a \$0.70 Customer Rebate to Remove Liquidity in Non-Penny Pilot Options (other than IWM, QQQ and SPY) and a \$0.12 per contract Customer Rebate to Remove Liquidity in IWM, QQQ and SPY. See Chapter XV, Section 2(1) of the BX Options Rules.

not unfairly discriminatory because the Exchange assesses an \$0.11 per contract fixed cost in addition to the away market transaction fee to route to an away market other than NOM or BX Options. The Exchange is offering a credit of \$0.16 per contract in those cases where there is an away market transaction fee or a rebate is not offered by the away market. When no transaction fee is assessed by the away market, the Exchange would only assess the \$0.11 per contract fixed fee and thus the member organization would recoup the fee assessed by the Exchange. If the away market pays a rebate to remove liquidity, the Exchange assesses the member organization the fixed fee of \$0.11 per contract, the away market transaction fee and then credits the member organization the rebate offered by the Exchange. In that case, the Exchange would pay the reduced \$0.11 per contract credit because the member organization has the benefit of the rebate from the away market. The Exchange also believes that the proposed credits are equitable and not unfairly discriminatory because any market participant that transacts Customer orders may qualify for the credit.

Finally, the Exchange believes that offering member organizations a lower credit for Routing to NOM and BX Options as compared to other away markets is equitable and not unfairly discriminatory because the fixed cost associated with Routing Fees in Section V of the Pricing Schedule are lower for a Customer order routed to NOM or BX Options (\$0.05 per contract) as compared to the fixed cost to route to an away market other than BX Options or NOM (\$0.11 per contract).¹⁷

¹⁷ The Exchange assesses a fixed fee of \$0.11 per contract for non-NASDAQ OMX exchanges and a \$0.05 per contract fee for BX Options and NOM. These fixed costs represent overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, which are in addition to the transaction fee assessed by the away market. Also, market participants whose orders routed to away markets are entitled

Technical Amendments

The Exchange's proposal to amend certain rule text in the Pricing Schedule to provide additional clarity, such as defining Common Ownership in the Preface to the Pricing Schedule and adding and amending other language to indicate the Monthly Market Maker Cap applies to electronic and floor transactions, and clarifying that the pricing specified in Section IV is in addition to other fees and rebates in Section I, including Payment for Order Flow fees where appropriate, is reasonable, equitable and not unfairly discriminatory because the amendments further clarify the Pricing Schedule.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to amend Section I of the Pricing Schedule to add the words "Complex Orders" prior to the language discussing the Pilot Program related to the \$0.05 per contract fee differential for Fees for Removing Liquidity for Specialists and Market Makers that transact against a Customer order directed to them because the addition of the words "Complex Order" further clarifies the Pricing Schedule.

Finally, the Exchange believes that amending Section IV to permit a member or member organization under common ownership, defined as 75% common ownership or control, with another member or member organization that qualifies for a Customer Rebate Tier in Section A to receive discounted PIXL fees is reasonable because the Exchange desires to provide all market participants the ability to obtain discounted PIXL

to receive rebates offered by away markets, which rebates would net against fees assessed by the Exchange for routing orders. As explained in a previous rule change, the actual cash outlays for the Exchange to route to BX Options and NOM is lower as compared to routing to other non-NASDAQ OMX exchanges. See Securities Exchange Act Release Nos. 68213 (November 13, 2012), 77 FR 69530 (November 19, 2012) (SR-Phlx-2012-129) and 68698 (January 18, 2013), 78 FR 5530 (January 25, 2013) (SR-Phlx-2013-04). See also Section V of the Pricing Schedule.

pricing. The Exchange currently permits aggregation under common ownership in Section IV for purposes of calculating the Threshold Volume. The Exchange believes that permitting members and member organizations that are affiliated and under common ownership to realize discounted pricing by allowing one firm to qualify for a Customer Rebate Tier and another affiliated member or member organization under common ownership to realize the discount is equitable and not unfairly discriminatory because the Exchange would permit all market participants the ability to aggregate the benefits of their trading activity for purposes of the Customer Rebate, as is the case today, even if certain members and member organizations chose to operate under separate entities. The Exchange currently permits such aggregation in the calculation of the Monthly Market Maker Cap and for purposes of PIXL fees.¹⁸

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 the Customer Rebate Program will encourage Customer order flow to be directed to the Exchange, which will benefit all market participants. 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. All market participants are eligible to qualify for a Customer Rebate. The Exchange believes these pricing amendments do not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange.

¹⁸ See supra note 14.

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 or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore 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.

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,¹⁹ 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 based on a rule change by CBOE.²⁰

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁰ 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

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.

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 percentage thresholds in a month as described in the Volume Incentive Program. Similar to CBOE, the Exchange proposes to calculate the percentage thresholds based on the percentage of national customer volume in multiply-listed options classes entered and executed over the course of the month. See SR-CBOE-2013-004 (not yet published).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2013-13)

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Relating to its Customer Rebate Program and other Technical Amendments

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 February 1, 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 the Exchange’s Pricing Schedule at Section A, entitled “Customer Rebate Program.” The Exchange also proposes technical amendments to the Preface, Section I, entitled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols,” Section II, entitled “Multiply Listed Options Fees,”³ and Section IV entitled “PIXL⁴ Pricing” of the Pricing Schedule.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

⁴ PIXL is the Exchange’s price improvement mechanism known as Price Improvement XL or (PIXLSM). See Rule 1080(n).

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 <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 the proposed rule change is to amend the Customer Rebate Program to incentivize market participants to increase the amount of Customer order flow they transact on the Exchange. The Exchange also proposes to amend and add certain rule text in the Pricing Schedule to provide additional clarity to the Pricing Schedule.

Customer Rebate Program

Currently, the Exchange pays Customer Rebates by calculating an Average Daily Volume Threshold. The Exchange calculates the Average Daily Volume Threshold by totaling Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o) ("Threshold Volume"). Rebates are paid

on Threshold Volume.

The Exchange is proposing to base the Customer Rebate Program on certain “Rebate Tiers.” The Exchange proposes to replace the current three tier structure, which pays rebates based on the number of contracts transacted in a month based on four Categories (A, B, C and D) of transactions, with a four tier structure. The four tier structure would pay rebates based on percentage thresholds of national customer multiply-listed options volume by month based on the same four Categories (A, B, C and D) of transactions. Specifically, the Exchange would base a market participant’s qualification for a certain Rebate Tier on the percentage of total national customer volume in multiply-listed options which are transacted monthly on Phlx. The Exchange proposes to establish a four tier Customer rebate structure with a column entitled “Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly).” The Exchange proposes the following Customer Rebate Tiers by percentages:

Customer Rebate Tiers	Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly)	Category A	Category B	Category C	Category D
Tier 1	0.00% - 0.75%	\$0.00	\$0.00	\$0.00	\$0.00
Tier 2	Above 0.75% - 1.60%	\$0.11	\$0.12	\$0.13	\$0.08
Tier 3	Above 1.60% - 2.60%	\$0.13	\$0.13	\$0.14	\$0.08
Tier 4	Above 2.60%	\$0.15	\$0.15	\$0.15	\$0.09

The Exchange believes that replacing the current tiers which require market participants to qualify for Customer Rebates based on a certain number contracts transacted in a month with a tier structure based on relative contracts per month as a percentage of total national customer volume in multiply-listed options transacted on Phlx would serve to control and account for industry-wide movements.

The Exchange is not proposing to amend the criteria to qualify for a certain rebate Category (A, B, C or D). These will remain the same pursuant to this proposal.⁵ In addition, the Exchange would continue to total Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o) in the same manner.⁶ The Exchange proposes to remove references to the Average Daily Volume Threshold and replace those references with Customer Rebate Tier references. The Exchange also proposes to permit members and member organizations under common ownership to aggregate their volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Common ownership, which the Exchange is proposing to define in the Preface to the Pricing Schedule as described in more detail

⁵ Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II. Rebates are paid on PIXL Orders in Section II symbols that execute against non-Initiating Order interest. Category B rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II. Category C rebates are paid to members executing electronically-delivered Customer Complex Orders in Select Symbols in Section I. Category D rebates will be paid to members executing electronically-delivered Customer Simple Orders in Select Symbols in Section I. Rebates are paid on PIXL Orders in Section I symbols that execute against non-Initiating Order interest.

⁶ For clarity, the Exchange will calculate volume and pay rebates based on a member organization's Phlx house account numbers.

below, shall mean 75% common ownership or control.

The Exchange is proposing to amend the rebates paid to market participants with this proposal. Currently, Categories A, B, C and D receive no rebate for volume between 0 to 99,999 contracts in a month. The Exchange proposes to pay Categories A, B, C and D no rebate with proposed Tier 1 which is between 0.00% to 0.75% of national customer volume in multiply-listed options classes. Currently, the Exchange pays the following rebates for Tier 2 volume which is between 100,000 and 349,999 contracts in a month: Category A: \$0.10, Category B: \$0.12, Category C: \$0.13 and Category D: \$0.05. The Exchange would pay the following rebates for new Tier 2 for a percentage of national customer volume in multiply-listed options classes above 0.75% to 1.60%: Category A: \$0.11, Category B: \$0.12, Category C: \$0.13 and Category D: \$0.08. Currently, the Exchange pays the following rebates for Tier 3 volume which is over 350,000 contracts in a month: Category A: \$0.15, Category B: \$0.15, Category C: \$0.15 and Category D: \$0.07. The Exchange would pay the following rebates for new Tier 3 for a percentage of national customer volume in multiply-listed options classes above 1.60% to 2.60%: Category A: \$0.13, Category B: \$0.13, Category C: \$0.14 and Category D: \$0.08. The Exchange would pay the following rebates for new Tier 4 for a percentage of national customer volume in multiply-listed options classes above 2.60%: Category A: \$0.15, Category B: \$0.15, Category C: \$0.15 and Category D: \$0.09. By way of example, a market participant that executes 3,000,000 electronically-delivered Customer Simple Order contracts in Select Symbols, which are Multiply Listed Options, in a given month where 150,000,000 national customer multiply-listed options contracts were executed would receive a credit of \$240,000. The market participant would have qualified for this

rebate because the number of qualifying contracts⁷ executed on Phlx represents 2% of the total national customer multiply-listed options volume and because the Customers orders were Simple Orders in Select Symbols, the Category D rate in Tier 3 of \$0.08 per contract would be applied to the 3,000,000 Customer contracts.

Finally, today, member organizations qualifying for either a Tier 2 or Tier 3 rebate are entitled to receive a credit of \$0.04 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to NASDAQ OMX BX, Inc. (“BX Options”) or the NASDAQ Options Market (“NOM”). Today, a member organization qualifying for either a Tier 2 or Tier 3 rebate is entitled to receive a credit of \$0.10 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if the Customer order is routed to an away market other than BX Options or NOM.

The Exchange proposes to amend the qualifying tiers from Tier 2 or 3 to Tiers 2, 3 or 4 to receive credits to the various away markets. The Exchange also proposes to amend the credit that will be paid per contract to \$0.10 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to NOM and \$0.05 per contract credit toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to BX Options. A member organization qualifying for a Tier 2, 3 or 4 rebate is entitled to a credit of \$0.16 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if the Customer order is routed to an away market other than BX Options or NOM, unless the away market transaction fee is \$0.00 or a rebate is paid by the away market, in which case the credit

⁷ Presuming the contracts are not electronic QCC Orders as defined in Rule 1080(o).

would be reduced to \$0.11 per contract. The Exchange believes that offering credits toward Routing Fees will continue to incentivize market participants to transact a greater number of Customer orders on the Exchange.

Technical Amendments

First, the Exchange utilizes the term “common ownership” throughout the Pricing Schedule and defines common ownership as 75% common ownership or control among members and member organizations.⁸ The Exchange proposes to amend the Preface of the Pricing Schedule to define “Common Ownership” for purposes of pricing. The Exchange also proposes to revise Sections II, IV and VI of the Pricing Schedule to simply refer to the defined term “Common Ownership” and eliminate the definitions throughout the rule text which reflect the same 75% common ownership or control language.

Second, the Exchange proposes to amend Section I of the Pricing Schedule to add the words “Complex Order” prior to the language discussing the Pilot Program related to the \$0.05 per contract fee differential for Fees for Removing Liquidity for Specialists and Market Makers that transact against a Customer order directed to them. The Exchange received approval for a Pilot Program which commenced on December 1, 2012.⁹ The Exchange believes the addition of the words “Complex Order” further clarifies the Pricing Schedule. The fee differential for directed orders applies to Complex Orders and does not apply to Simple Orders.

⁸ See Sections II, IV and VI of the Pricing Schedule.

⁹ See Securities Exchange Release No. 66884 (April 30, 2012), 77 FR 26595 (May 4, 2012) (SR-Phlx-2012-27 and SR-Phlx-2012-54). See also Securities Exchange Act Release No. 68376 (December 6, 2012), 77 FR 74039 (December 12, 2012) (SR-Phlx-2012-139).

Third, the Exchange proposes to amend the Section II Monthly Market Maker Cap rule text to specify that the Monthly Market Maker Cap applies to electronic and floor transactions. The Exchange proposes to remove the word “equity” from this paragraph as that word is not necessary. Also, the Exchange proposes to refer to Options Transaction Charges instead of “fees” in that same paragraph for consistency.

Fourth, the Exchange proposes to remove the rule text describing the common ownership in Section IV because the Exchange has proposed herein to permit members and member organization under common ownership to aggregate Customer Rebate volume in Section A. The Exchange proposes to include rule text to permit any member or member organization under common ownership with another member or member organization that qualifies for a Customer Rebate Tier discount in Section A to receive the discounted PIXL Initiating Order discount as proposed herein. For example, if Phlx member A qualifies for a Tier 5 Customer Rebate pursuant to Section A of the Pricing Schedule, Phlx member B, an affiliate of member A and 75% commonly owned by the same parent, would be entitled to the discounted Initiating Order Fee of \$0.05 per contract. The Exchange would utilize the proposed defined term “Common Ownership” in this section.

Fifth, the Exchange proposes to clarify in Section IV of the Pricing Schedule that with respect to PIXL Order executions in Section I Select Symbols,¹⁰ the pricing specified in Section IV is in addition to other fees and rebates in Section I, including Payment for Order Flow fees where appropriate. The Exchange makes a similar statement in Section IV, Part A with respect to Section II PIXL fees and proposes this

¹⁰ Select Symbols are defined in Section I of the Pricing Schedule.

additional language for consistency and clarity.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Customer Rebate Program

The Exchange's proposal to convert the qualification for the rebate tiers from measuring a market participant's per month Average Daily Contract Volume to relative contracts per month based on national customer volume in multiply-listed options classes executed on Phlx is reasonable because it allows the Exchange to control and account for changes in the national industry-wide customer multiply-listed options volume. Further, it will still allow market participants to receive rebates on Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as is the case today. The Exchange believes that the amended Customer Rebate Program should incentivize market participants to increase the amount of Customer orders that are transacted on the Exchange to obtain a rebate. In addition, other exchanges employ similar incentive programs.¹³

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ 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

The Exchange's proposal to convert the qualification for the rebate tiers from measuring a market participant's per month Average Daily Contract Volume to relative contracts per month based on national customer volume in multiply-listed options classes executed on Phlx is equitable and not unfairly discriminatory because it will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the rebate provided they transact a qualifying amount of electronic Customer volume. The Exchange is merely amending the measuring stick that it utilized to determine the amount of qualifying volume. The Exchange would account for changes in industry-wide volume with the amendment.

The Exchange believes that amending the rebates offered in Categories A, B, C and D is reasonable because with respect to Tier 1, the Exchange would continue to not offer a rebate to market participants. The Exchange is also adding several new tiers which allow market participants the opportunity to achieve higher rebates in Category A and substantially the same and higher rebates in Categories B, C and D. With respect to Tiers 2, 3, and 4, the Exchange believes that it is providing market participants the opportunity to earn higher rebates. Proposed Tier 2 rebates are the same or higher than the Tier 2 rebates today. Proposed Tier 3 rebates are slightly lower than the current Tier 3 rebates. Proposed Tier 4 rebates are the same or higher than the current Tier 3 rebates, which today are the highest rebates that a market participant can achieve under the program. The Exchange is unable to specify with certainty which tier would apply to

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 percentage thresholds in a month as described in the Volume Incentive Program.

participants that are executing a certain amount of Customer volume today. The Exchange believes that the rebates proposed herein are reasonable because market participants may be able to obtain higher rebates beyond Tier 1 if they are able to qualify for a higher tier as compared to today's tiers with the proposed method of percentages of national customer volume.

The Exchange believes that amending the rebates offered in Categories A, B, C and D is equitable and not unfairly discriminatory because the rebates will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the rebate provided they transact a qualifying amount of electronic Customer volume.

The Exchange believes that permitting members and member organizations to aggregate their volume if they are under common ownership, defined as 75% common ownership or control, is reasonable because the Exchange desires to provide all market participants the ability to obtain Customer Rebates. The Exchange believes that permitting members and member organizations to aggregate their volume if they are under common ownership is equitable and not unfairly discriminatory because the Exchange would permit all market participants the ability to aggregate for purposes of receiving the Customer Rebate even if certain members and member organizations chose to operate under separate entities. The Exchange currently permits such aggregation in the calculation of the Monthly Market Maker Cap and for purposes of PIXL fees.¹⁴

¹⁴ See Section II of the Pricing Schedule. Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$550,000 for: (i) equity option transaction fees; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. 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

The Exchange's proposal to further reduce Routing Fees¹⁵ in Section V of the Exchange's Pricing Schedule for member organizations that qualify for Tiers 2, 3 or 4 in the Customer Rebate Program in Section A of the Pricing Schedule is reasonable because the Exchange proposes to provide an additional incentive for transacting Customer orders on the Exchange. By offering member organizations a credit toward the cost of routing to an away market, the Exchange is seeking to encourage market participants to transact a greater number of Customer orders on Phlx which liquidity benefits all market participants. In addition, the Exchange is offering the credit toward Customer Routing Fees in addition to the Customer rebate received for the qualifying Customer Rebate Tier.

The Exchange believes that providing a credit of \$0.10 per contract toward the Customer Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to NOM and a \$0.05 per contract credit toward the Customer Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to BX Options is equitable and not unfairly discriminatory because NOM does not pay a Customer Rebate to Remove Liquidity and BX Options pays a Rebate to Remove

member organizations. See also Section IV of the Pricing Schedule. For purposes of the PIXL Initiating Order members and member organizations under common ownership may aggregate their Customer Rebate Program volume.

¹⁵ Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative and technical costs associated with operating NOS that are assessed on the Exchange, membership fees at away markets, and technical costs associated with routing options. The Routing Fees enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of orders by the away market.

Liquidity.¹⁶ The Exchange believes that paying a \$0.16 per contract credit toward the Routing Fee specified in Section V of the Pricing Schedule if a member organization qualifies for a Tier 2, 3 or 4 rebate if the Customer order is routed to away market other than BX Options or NOM unless the away market transaction fee is \$0.00 or a rebate is paid by the away market, in which case \$0.11 per contract would be paid, is equitable and not unfairly discriminatory because the Exchange assesses an \$0.11 per contract fixed cost in addition to the away market transaction fee to route to an away market other than NOM or BX Options. The Exchange is offering a credit of \$0.16 per contract in those cases where there is an away market transaction fee or a rebate is not offered by the away market. When no transaction fee is assessed by the away market, the Exchange would only assess the \$0.11 per contract fixed fee and thus the member organization would recoup the fee assessed by the Exchange. If the away market pays a rebate to remove liquidity, the Exchange assesses the member organization the fixed fee of \$0.11 per contract, the away market transaction fee and then credits the member organization the rebate offered by the Exchange. In that case, the Exchange would pay the reduced \$0.11 per contract credit because the member organization has the benefit of the rebate from the away market. The Exchange also believes that the proposed credits are equitable and not unfairly discriminatory because any market participant that transacts Customer orders may qualify for the credit.

¹⁶ BX Options pays a \$0.32 per contract Customer Rebate to Remove Liquidity in Penny Pilot Options, a \$0.70 Customer Rebate to Remove Liquidity in Non-Penny Pilot Options (other than IWM, QQQ and SPY) and a \$0.12 per contract Customer Rebate to Remove Liquidity in IWM, QQQ and SPY. See Chapter XV, Section 2(1) of the BX Options Rules.

Finally, the Exchange believes that offering member organizations a lower credit for Routing to NOM and BX Options as compared to other away markets is equitable and not unfairly discriminatory because the fixed cost associated with Routing Fees in Section V of the Pricing Schedule are lower for a Customer order routed to NOM or BX Options (\$0.05 per contract) as compared to the fixed cost to route to an away market other than BX Options or NOM (\$0.11 per contract).¹⁷

Technical Amendments

The Exchange's proposal to amend certain rule text in the Pricing Schedule to provide additional clarity, such as defining Common Ownership in the Preface to the Pricing Schedule and adding and amending other language to indicate the Monthly Market Maker Cap applies to electronic and floor transactions, and clarifying that the pricing specified in Section IV is in addition to other fees and rebates in Section I, including Payment for Order Flow fees where appropriate, is reasonable, equitable and not unfairly discriminatory because the amendments further clarify the Pricing Schedule.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to amend Section I of the Pricing Schedule to add the words "Complex

¹⁷ The Exchange assesses a fixed fee of \$0.11 per contract for non-NASDAQ OMX exchanges and a \$0.05 per contract fee for BX Options and NOM. These fixed costs represent overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, which are in addition to the transaction fee assessed by the away market. Also, market participants whose orders routed to away markets are entitled to receive rebates offered by away markets, which rebates would net against fees assessed by the Exchange for routing orders. As explained in a previous rule change, the actual cash outlays for the Exchange to route to BX Options and NOM is lower as compared to routing to other non-NASDAQ OMX exchanges. See Securities Exchange Act Release Nos. 68213 (November 13, 2012), 77 FR 69530 (November 19, 2012) (SR-Phlx-2012-129) and 68698 (January 18, 2013), 78 FR 5530 (January 25, 2013) (SR-Phlx-2013-04). See also Section V of the Pricing Schedule.

Orders” prior to the language discussing the Pilot Program related to the \$0.05 per contract fee differential for Fees for Removing Liquidity for Specialists and Market Makers that transact against a Customer order directed to them because the addition of the words “Complex Order” further clarifies the Pricing Schedule.

Finally, the Exchange believes that amending Section IV to permit a member or member organization under common ownership, defined as 75% common ownership or control, with another member or member organization that qualifies for a Customer Rebate Tier in Section A to receive discounted PIXL fees is reasonable because the Exchange desires to provide all market participants the ability to obtain discounted PIXL pricing. The Exchange currently permits aggregation under common ownership in Section IV for purposes of calculating the Threshold Volume. The Exchange believes that permitting members and member organizations that are affiliated and under common ownership to realize discounted pricing by allowing one firm to qualify for a Customer Rebate Tier and another affiliated member or member organization under common ownership to realize the discount is equitable and not unfairly discriminatory because the Exchange would permit all market participants the ability to aggregate the benefits of their trading activity for purposes of the Customer Rebate, as is the case today, even if certain members and member organizations chose to operate under separate entities. The Exchange currently permits such aggregation in the calculation of the Monthly Market Maker Cap and for purposes of PIXL fees.¹⁸

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

The Exchange does not believe that the proposed rule change will impose any

¹⁸ See supra note 14.

burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the Customer Rebate Program will encourage Customer order flow to be directed to the Exchange, which will benefit all market participants. 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. All market participants are eligible to qualify for a Customer Rebate. The Exchange believes these pricing amendments do not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange.

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 or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore 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.

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.¹⁹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2013-13 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-2013-13. 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

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2013-13 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.²⁰

Kevin M. O'Neill
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

NASDAQ OMX PHLX LLC¹ PRICING SCHEDULE

* * * * *

PREFACE

For purposes of assessing fees, the following references should serve as guidance.

* * * * *

The term "**Broker-Dealer**" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

The term "**Common Ownership**" shall mean members or member organizations under 75% common ownership or control.

* * * * *

A. Customer Rebate Program

The [Average Daily Volume Threshold] Customer Rebate Tiers described below will be calculated by totaling Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o) ["Threshold Volume"]. Rebates will be paid on [Threshold Volume]Customer Rebate Tiers according to the below categories. Members and member organizations under Common Ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates.

[Average Daily Volume Threshold]	[Rebate per Contract Categories]			
	[Category A]	[Category B]	[Category C]	[Category D]
[Tier 1: 0 to 99,999 contracts in a month]	[\$0.00]	[\$0.00]	[\$0.00]	[\$0.00]
[Tier 2: 100,000 to 349,999 contracts in a month]	[\$0.10]	[\$0.12]	[\$0.13]	[\$0.05]

[Tier 3: over 350,000 contracts in a month] [\$0.15] [\$0.15] [\$0.15] [\$0.07]

<u>Customer Rebate Tiers</u>	<u>Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly)</u>	<u>Category A</u>	<u>Category B</u>	<u>Category C</u>	<u>Category D</u>
<u>Tier 1</u>	<u>0.00% - 0.75%</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Tier 2</u>	<u>Above 0.75% - 1.60%</u>	<u>\$0.11</u>	<u>\$0.12</u>	<u>\$0.13</u>	<u>\$0.08</u>
<u>Tier 3</u>	<u>Above 1.60% - 2.60%</u>	<u>\$0.13</u>	<u>\$0.13</u>	<u>\$0.14</u>	<u>\$0.08</u>
<u>Tier 4</u>	<u>Above 2.60%</u>	<u>\$0.15</u>	<u>\$0.15</u>	<u>\$0.15</u>	<u>\$0.09</u>

Category A: Rebate will be paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II. Rebate will be paid on PIXL Orders in Section II symbols that execute against non-Initiating Order interest.

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

Category C: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Select Symbols in Section I.

Category D: Rebate will be paid to members executing electronically-delivered Customer Simple Orders in Select Symbols in Section I. The rebate will be paid on PIXL Orders in Section I symbols that execute against non-Initiating Order interest.

A [M]member organization[s] qualifying for [either] a Tier 2, 3 or 4 [or Tier 3] rebate, described above, [are]is entitled to receive a credit of \$0.[04]10 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to [BX Options or the] NASDAQ Options Market (NOM) and a \$0.05 per contract credit if a Customer order is routed to BX Options. A member organization qualifying for [either] a Tier 2, 3 or 4 [or Tier 3] rebate, described above, is entitled to receive a credit of \$0.1[0]6 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if the Customer order is routed to an away market other than BX Options or NOM unless the away market transaction fee is \$0.00 or the away market pays a rebate, in which case the member organization is entitled to receive a credit of \$0.11 per contract toward the Routing Fee specified in Section V of the Pricing Schedule.

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

Select Symbols BAC, EEM, GLD, IWM, MSFT, QQQ, SPY, and XLF. The following fees in this Section I shall only apply to Select Symbols.

* * * * *

Part B. Complex Order

	Customer	Specialist	Market Maker	Firm	Broker- Dealer	Professional
Fee for Adding Liquidity	\$0.00	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10
Fee for Removing Liquidity	\$0.00	\$0.25	\$0.25	\$0.50	\$0.50	\$0.50

- Complex Order Fees for Removing Liquidity, applicable to Specialists and Market Makers, will be decreased by \$0.05 per contract when the Specialist or Market Maker transacts against a Customer Order directed to that Specialist or Market Maker for execution pursuant to a one-year pilot set to expire on December 2, 2013.

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

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- Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$550,000 for: (i) [equity] electronic and floor [o]Option [t]Transaction [fees] Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. 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] 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 or 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 \$0.16 per contract fee. 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 or 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 or Market Maker has reached the Monthly Market Maker Cap, except for reversal and conversion strategies executed via QCC. The Service Fee will not be assessed to a Specialist or Market Maker that does not reach the Monthly Market Maker Cap in a particular calendar month.

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IV. Other Transaction Fees

A. PIXL Pricing

Initiating Order \$0.07 per contract or \$0.05 per contract if Customer Rebate Program (Sections I and II) Threshold Volume defined in Section A is greater than 100,000 contracts per day in a month. [Members and member organizations under common ownership may aggregate their Customer Rebate Program Threshold Volume for purposes of calculating the Threshold Volume for the Initiating Order fee. Common ownership is defined as 75 percent common ownership or control.] Any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier discount in Section A will receive the PIXL Initiating Order discount as described above.

PIXL Order Executions in Section I Select Symbols:

- When the PIXL Order is contra to the Initiating Order a Customer PIXL Order will be assessed \$0.00 and all non-Customer market participant PIXL Orders will be assessed \$0.30 per contract when contra to the Initiating Order.
- When a PIXL Order is contra to a PIXL Auction Responder, the PIXL Order will be assessed the Fee for Adding Liquidity in Section I and the Responder will be assessed \$0.30 per contract, unless the Responder is a Customer, in which case the fee will be \$0.00 per contract.
- When the PIXL Order is contra to a resting order or quote that was on the PHLX book prior to the auction, the PIXL Order will be assessed the Fee for Removing Liquidity not to exceed \$0.30 per contract and the resting order or quote will be assessed the Fee for Adding Liquidity in Section I. If the resting order or quote that was on the PHLX book was entered during the Auction, the PIXL Order will be assessed the Fee for Adding Liquidity in Section I and the resting order or quote will be assessed the Fee for Removing Liquidity not to exceed \$0.30 per contract.
- All other Section I fees and rebates, including Payment for Order Flow, will also apply as appropriate.

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VI. MEMBERSHIP FEES

A. Permit and Registration Fees

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¹⁵A member or member organization will be assessed the \$2,100 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 [c]Common [o]Ownership, transacts at least one options trade in a Phlx house account that is assigned to one of the member organizations under [c]Common [o]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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