

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * SECURITIES AND EXCHANGE COMMISSION File No.* SR - - *
 WASHINGTON, D.C. 20549 Form 19b-4 Amendment No. (req. for Amendments *)

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

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<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 Section 806(e)(1) <input checked="" type="checkbox"/> Section 806(e)(2) <input checked="" type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input checked="" type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposed rule change relating to pricing for Mini Options.

Contact Information

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

First Name * Last Name *
 Title *
 E-mail *
 Telephone * 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

By

(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

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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 by adding Section A, entitled “Mini Options Fees,” and by redesignating existing Section A as Section B.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated that they become operative on March 28, 2013.

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 rule change.

Questions and comments on the proposed rule change may be directed to Carla Behnfeldt, Associate General Counsel, at (215) 496-5208.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to set forth in new Section A of the Pricing Schedule the applicability of various existing fees, rebates, and caps to Mini Options, and specifically to establish that transaction fees with respect to Mini Options will be set at \$0.00. Existing Section A, Customer Rebate Program, will be redesignated as Section B.

The Exchange represented in its filing establishing Mini Options (the "Mini Options Listing Filing") that "the current Pricing Schedule will not apply to the trading of mini-option contracts" and that "[t]he Exchange will not commence trading of mini-option contracts until specific fees for mini-options contracts trading have been filed with the Commission."³ The purpose of the proposed new Section A is to adopt the fees that are specific to Mini Options, as provided for in the Mini Options Listing Filing.

New Section A will appear after the Preface section of the Pricing Schedule which contains definitions that apply to the entire Pricing Schedule, including new Section A. Except where different treatment is specified for Mini Options in Section A, the rest of the Pricing Schedule will apply to Mini Options in the same way it applies to all other options. For example, a Mini Options class will count as an options class assignment for purposes of determining the level of Streaming Quote Trader Fees and Remote Streaming Quote Trader Fees in Section VI. Cross references to Section A in the

³ See SR-Phlx-2012-126, page 8. See also Securities Exchange Act Release No. 68132 (November 1, 2012), 77 FR 66904 (November 7, 2012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of Certain Securities).

Table of Contents and Section IV.A, PIXL Pricing, will be updated to refer to Section B, and the Table of Contents will be updated to refer to Mini Options as new Section A.

Applicable Symbols. Proposed new Section A identifies the Mini Options symbols as AAPL7, AMZN7, GLD7, GOOG7 and SPY7. Accordingly, new Section A will apply exclusively to these new symbols.

Transaction Fees. New Section A provides for a “Mini Options Transaction Fee – Electronic” and for a “Mini-Options Transaction Fee – Floor and QCC”, both of which will apply in the Customer, Professional, Specialist and Market Maker, Broker-Dealer and Firm fee categories.⁴ In each case, the Exchange is currently setting these fees at \$0.00 but may in the future file proposed rule changes to amend the transaction fee level in one or more categories. The Exchange is establishing the separate Section A Pricing Schedule section for Mini Options transaction fees in order to facilitate differentiation in the future between Mini Options transaction fees and other options transaction fees.

PIXL Executions. The new Section A transaction fees will apply to PIXL executions in Mini Options rather than the PIXL Pricing fees set forth in Section IV.A.⁵

Payment for Order Flow. Pursuant to new Section A, Payment for Order Flow Fees set forth in Section II of the Pricing Schedule will not apply to Mini Options.⁶

⁴ Transaction fees for options other than Mini Options are currently found in Sections I through III of the Pricing Schedule.

⁵ PIXL is the Exchange’s price improvement mechanism known as Price Improvement XL or (PIXLSM). See Rule 1080(n) and Section IV of the Pricing Schedule.

⁶ The Payment for Order Flow program started on July 1, 2005 as a pilot and after a series of orders extending the pilot became effective on April 29, 2012. See Securities Exchange Act Release No. 52114 (July 22, 2005), 70 FR 44138 (August 1, 2005) (SR-Phlx-2005-44); 57851 (May 22, 2008), 73 FR 31177 (May 20, 2008)(SR-Phlx-2008-38); 55891 (June 11, 2007), 72 FR 333271 (June 15,

Customer Rebate Program. New Section A clarifies that Mini Options volume will not be included in and will not be eligible for the Customer Rebate Program which is being moved from Section A of the Pricing Schedule to Section B of the Pricing Schedule.⁷

Routing Fees. Today, the Exchange calculates Routing Fees by assessing certain Exchange costs related to routing orders to away markets plus the away market's actual transaction fee.⁸ The Exchange assesses a \$0.05 per contract fixed Routing Fee when routing orders to the NASDAQ Options Market LLC ("NOM") and NASDAQ OMX BX, Inc. ("BX Options") and a \$0.11 per contract fixed Routing Fee to all other options exchanges in addition to the actual transaction fee or rebate paid by the away market.⁹

2007)(SR-Phlx-2007-39); 53754 (May 3, 2006), 71 FR 27301 (May 10, 2006) (SR-Phlx-2006-25); 53078 (January 9, 2006), 71 FR 2289 (January 13, 2006) (SR-Phlx-2005-88); 52568 (October 6, 2005), 70 FR 60120 (October 14, 2005) (SR-Phlx-2005-58); and 59841 (April 29, 2009), 74 FR 21035 (May 6, 2009) (SR-Phlx-2009-38).

⁷ The Exchange has recently described and amended its Customer Rebate Program. See SR-Phlx-2013-13. See also Securities Exchange Act Release No. 68924 (February 13, 2013), 78 FR 11916 (February 20, 2013).

⁸ Routing fees applicable to options other than Mini Options are set forth in Section V of the Pricing Schedule. Routing fees allow the Exchange to recoup costs it incurs for routing and executing orders in equity options to various away markets.

⁹ The fixed Routing Fee is based on costs that are incurred by the Exchange when routing to an away market in addition to the away market's transaction fee. For example, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC ("NOS"), a member of the Exchange and the Exchange's exclusive order router, to route orders in options listed and open for trading on the PHLX XL system to destination markets. Each time NOS routes to away markets NOS incurs a clearing-related cost and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange also incurs administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees ("ORFs") and technical costs associated with routing options. The transaction fee assessed by the Exchange is based on the away market's actual transaction fee or rebate for a

With respect to the rebate, the Exchange pays a market participant the rebate offered by an away market where there is such a rebate. Any rebate available is netted against a fee assessed by the Exchange. With respect to orders routed to C2 Options Exchange, Incorporated (“C2”), the Exchange assesses non-Customer simple, non-complex orders in equity options (single stock) that are routed to C2 a Routing Fee which includes a fixed cost of \$0.11 per contract plus a flat rate of \$0.85 per contract, except with respect to Customers. With respect to Customers, the Exchange does not pass the rebate offered by C2, rather, Customer simple, non-complex orders in equity options (single stock) that are routed to C2 are assessed \$0.00 per contract.

The Exchange has recently filed a proposed rule change to make a number of pricing changes described in this paragraph to its Routing Fees. Effective April 1, 2013, the Exchange’s Routing Fees in Section V of the Pricing Schedule will be as follows: non-Customers will be assessed a \$0.95 per contract flat fee and the Customer Routing Fee will be dependent on the away market.¹⁰ With respect to Customer orders routed to NOM, the Exchange will assess a fixed fee of \$0.05 per contract (“Fixed Fee”) in addition to the actual transaction fee assessed by the away market would apply. With respect to Customer orders that are routed to BX Options, the Exchange will not assess a Routing Fee and will not pass the rebate. The Exchange will assess a Customer Routing Fee of \$0.11 per contract (“Fixed Fee”) in addition to the actual transaction fee when

particular market participant at the time that the order was entered into the Exchange’s trading system. This transaction fee is calculated on an order-by-order basis, since different away markets charge different amounts. In the event that there is no transaction fee or rebate assessed by the away market, the only fee assessed is the fixed Routing Fee.

¹⁰ See SR-Phlx-2013-23 (not yet published).

routing to an options exchange other than NOM and BX Options. Similar to Customer orders routed to BX, the Exchange will no longer pass any rebate paid by any away market for any Customer orders.

New Section A establishes Routing Fees for Mini Options that will apply instead of the existing Routing Fees set forth in Section V of the Pricing Schedule. Routing Fees for Customers are set at \$0.01 per contract in addition to the actual transaction fee assessed. If the away market pays a rebate, the Customer Routing Fee will be \$0.00. Routing Fees for all other participants (non-Customers) will be a flat rate of \$0.15 per contract and the Exchange will not charge non-Customers the actual transaction fee assessed by the away market or pass back any rebate.

QCC Transaction Fees and Rebates. New Section A establishes that QCC Transaction fees and rebates, set forth in Section II¹¹ of the Pricing Schedule, are not applicable to Section A of the Pricing Schedule.

Fee Caps. New Section A provides that the Monthly Market Maker Cap¹² and the Monthly Firm Fee Cap¹³, defined in Section II of the Pricing Schedule, will not be

¹¹ QCC Orders are defined in Rule 1080(o).

¹² The Monthly Market Maker Cap is \$550,000 for: (i) electronic and floor Option Transaction 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 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 applies once a Specialist or Market

applicable to transactions in Mini Options. Therefore, any fees that may be assessed with respect to transactions in Mini Options will not be applied toward these caps.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁵ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Transaction Fees. The Exchange believes that the proposed Mini Options Transaction Fee-Electronic and Mini Options Transaction Fee – Floor and QCC, as well as the applicability of those fees to PIXL executions in Mini Options, are reasonable because those fees are set at zero in order to encourage market participants to transact Mini Options. They are also equitable and not unfairly discriminatory because all the market participant categories will be able to take advantage of the zero fee level and will therefore be treated in a uniform matter. Likewise, the Exchange believes that not applying QCC Transaction fees and rebates to transactions in Mini Options is reasonable,

Maker has reached the Monthly Market Maker Cap. The \$0.07 Service Fee applies 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 is not being assessed to a Specialist or Market Maker that does not reach the Monthly Market Maker Cap in a particular calendar month.

¹³ Firms are subject to a maximum fee of \$75,000 (“Monthly Firm Fee Cap”). Firm floor option transaction charges and QCC Transaction Fees as defined in Section II of the Pricing Schedule in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

equitable and not unfairly discriminatory because the Exchange does not desire to assess certain transaction fees to encourage all market participants to transact Mini Options. No market participant would be assessed QCC Transaction fees or rebates.

Fee Caps. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to not apply the Monthly Market Maker Cap or Monthly Firm Fee Cap to Mini Options transaction fees because the Mini Options transaction fees are set at zero in any event for all market participants. The fee caps would not be affected by transactions in Mini Options for which transaction fees are not assessed in the first place.

Customer Rebate Program. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory that Mini Options volume will not be included in and will not be eligible for the Customer Rebate Program defined in newly relocated Section B of the Pricing Schedule. The Customer Rebate Program was established to incentivize market participants to increase the amount of Customer order flow they transact on the Exchange.¹⁶ The Customer Rebate Program is predicated on certain volume tiers that assume an option contract size of 100 shares. Due to the smaller size of the Mini Options contract, Mini Options will not make sense in the context of the volume tiers upon which the calculation of the Customer Rebate is based and the logic behind the Customer Rebate Program would not be achieved by including them. For this reason the Exchange believes that it is reasonable to not permit Mini Options to qualify in the Customer Rebate Program. Also, the Exchange would uniformly not pay rebates to any market participant transacting Customer Mini Options. Finally, redesignation of the caption of

¹⁶ See Securities Exchange Act Release No. 68924 (February 13, 2013), 78 FR 11916 (February 20, 2013).

the Customer Rebate Program from A. to B. will provide clarity to the Pricing Schedule as it accommodates the new Mini Options Fees language in A.

Payment for Order Flow Fees. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory that the Payment for Order Flow fees set forth in Section II will not apply to Mini Options because the Exchange is not charging any transaction fees for these products at this time. By eliminating Payment for Order Flow Fees as applied to Mini Options the Exchange will incentivize members to transact in them. Further, Specialists and Market Makers will not be singled out from among other market participants for assessment of this fee. All market participants will be treated the same way by not having the Payment for Order Flow fees imposed on them with respect to Mini Options.

Proposed Mini Options Routing Fees - Customers. In the proposed new language in Section A of the Pricing Schedule, for Mini Options a \$0.01 per contract Routing Fee will be charged for Customer orders in addition to the actual transaction fee assessed, provided that if the away market pays a rebate to the Exchange, the Customer Routing Fee is \$0.00. The Customer Routing Fees for Mini Options are reasonable because they will allow the Exchange to recoup and cover its costs of providing routing services for Customer orders in Mini Options just as it does for other standard equity options for which it incurs the same costs. The Exchange believes this Routing Fee for Customers in Mini Options is reasonable because it is lower than the other fixed Routing Fees for standard options, as discussed above, which are assessed with respect to Customer transactions in other options pursuant to Section V of the Pricing Schedule. Additionally, the Customer Routing Fees will be similar to the new Routing Fees that the Exchange

recently filed and which will be operative on April 1, 2013, except the fixed cost will be lower in the case of Mini Options. Similar to that filing, the Exchange would not pass rebates back to Customers, but would also not assess a Customer a Routing Fee if a rebate were paid by the away market. The Exchange believes that its proposal to not pass a rebate that is offered by an away market for Customers orders in Mini Options is reasonable because to the extent that another market is paying a rebate, the Exchange will not assess a Routing Fee for that transaction. If a market participant desires the rebate, the market participant has the option to direct the order to that away market. Other options exchanges today do not pass the rebate.¹⁷

The Exchange believes the Routing Fees for Mini Options for Customers are equitable and not unfairly discriminatory because the Exchange would uniformly assess the same Routing Fees to all Customers, and because market participants have the ability to directly route orders in Mini Options to an away market and avoid the Routing Fee. Also, market participants may submit orders to the Exchange as ineligible for routing or “DNR” to avoid Routing Fees. The Exchange believes that its proposal to not pass a rebate that is offered by an away market for Customer Mini Option orders is equitable and not unfairly discriminatory because the Exchange would not pay such a rebate on any Customer Mini Option order.

Proposed Mini Options Routing Fees - Non-Customers. In the proposed new language in Section A of the Pricing Schedule, Routing Fees for Mini Options for all participants other than Customers (“non-Customers”) will be a flat fee of \$0.15 per contract. The Exchange believes this fee is reasonable because it is lower than the \$0.95

¹⁷ See CBOE’s Fees Schedule and International Securities Exchange LLC’s (“ISE”) Fee Schedule.

per contract flat fee that will be in effect on April 1, 2013 for non-Customer orders routed to all options exchanges (other than BX Options and NOM) for orders in options other than Mini Options.¹⁸ The non-Customer Routing Fees for Mini Options are reasonable because they will allow the Exchange to recoup and cover its costs of providing routing services for non-Customer orders in Mini Options just as it does for other equity options for which it incurs the same costs. The Exchange believes that its proposal to amend its non-Customer Routing Fees from a fixed fee plus actual transaction charges to a flat rate is reasonable because the flat rate makes it easier for market participants to anticipate the Routing Fees which they would be assessed at any given time. The Exchange believes that assessing all non-Customer orders the same flat rate will provide market participants with certainty with respect to Routing Fees. While each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets, including clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options, the Exchange believes that the proposed Routing Fees will enable it to recover the costs it incurs to route non-Customer orders to away markets. Other exchanges similarly assess a fixed rate fee to route non-Customer orders.¹⁹

¹⁸ The Exchange believes that the proposed non-Customer Routing Fee for Mini Options that are routed to BX and NOM is reasonable even though it is higher than \$0.05 Routing Fee assessed with respect to non-Customer orders routed to BX and NOM today in options other than Mini Options, inasmuch as the Exchange is not charging any transaction fees with respect to Mini Options.

¹⁹ BATS Exchange, Inc. ("BATS") assesses non-Customer fixed rates of \$0.57 and \$0.95 per contract when routing to away markets. See BATS BZX Exchange Fee Schedule. The Chicago Board Options Exchange Incorporated ("CBOE")

The Exchange believes that its proposal to amend the non-Customer Routing Fees from a fixed fee plus actual transaction charges to a flat rate is equitable and not unfairly discriminatory because the Exchange would uniformly assess the same Routing Fees to all non-Customer market participants. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or a slight loss for non-Customer orders routed to and executed at away markets. The proposed Routing Fee for non-Customer orders is an approximation of the maximum fees the Exchange will be charged for such executions, including costs, at away markets. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services for non-Customer orders. The Exchange believes that the fixed rate non-Customer Routing Fee is equitable and not unfairly discriminatory because market participants have the ability to directly route orders to an away market and avoid the Routing Fee. Also, market participants may submit orders to the Exchange as ineligible for routing or “DNR” to avoid Routing Fees. It is important to note that when orders are routed to an away market they are routed based on price first.

The Exchange believes that its proposal to not pass a rebate that is offered by an away market for non-Customers orders is reasonable because to the extent that another market is paying a rebate, the Exchange will assess a \$0.15 per contract fee as its total cost in each instance. The Routing Fee is transparent and simple. If a market participant desires the rebate, the market participant has the option to direct the order to that away market. Other options exchanges today do not pass the rebate. The Exchange believes that its proposal to not pass a rebate that is offered by an away market for non-Customers

assesses non-Customer orders a \$0.50 per contract routing fee in addition to the customary CBOE execution charges. See CBOE’s Fees Schedule.

orders is equitable and not unfairly discriminatory because the Exchange would not pay such a rebate on any non-Customer order. The Exchange believes the Routing Fees for Mini Options for non-Customers are equitable and not unfairly discriminatory because the Exchange would uniformly assess the same Routing Fees to all non-Customer market participants.

Finally, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess different fees for Customers orders as compared to non-Customer orders because the Exchange has traditionally assessed lower fees to Customers as compared to non-Customers. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders in standard options.²⁰

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 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

²⁰ BATS assesses lower customer routing fees as compared to non-customer routing fees per the away market. For example BATS assesses ISE customer routing fees of \$0.30 per contract and an ISE non-customer routing fee of \$0.57 per contract. See BATS BZX Exchange Fee Schedule.

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.

The Mini Options are a new product that will commence trading on the Exchange on March 28, 2013. The Exchange believes that incentivizing market participants to transact Mini Options by not assessing transaction fees and certain other fees encourages competition in these products. There is no intra-market competition as the Exchange will treat all market participants in a like manner with respect to the transaction fees. Also, the Exchange believes that because other markets will also list Mini Options there is no undue burden on intermarket competition because market participants will be able to select the venue where they will trade these products. In terms of Routing, the Exchange believes that assessing Customers lower fees as compared to Non-Customers and assessing the same Routing Fees to all Non-Customers regardless of the venue does not create an undue burden on competition. The Exchange has traditionally assessed no or lower fees to Customers. Also, the Exchange believes that because Mini Options represent 1/10th of the size of a standard option contract, reduced Routing Fees will not misalign the cost to transact Mini Options.

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,²¹ 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

Not applicable.

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.

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2013-35)

March __, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Pricing for Mini Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on March 26, 2013, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a 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 its Pricing Schedule by adding Section A, entitled “Mini Options Fees,” and by redesignating existing Section A as Section B.

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.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated that they become operative on March 28, 2013.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 set forth in new Section A of the Pricing Schedule the applicability of various existing fees, rebates, and caps to Mini Options, and specifically to establish that transaction fees with respect to Mini Options will be set at \$0.00. Existing Section A, Customer Rebate Program, will be redesignated as Section B.

The Exchange represented in its filing establishing Mini Options (the “Mini Options Listing Filing”) that “the current Pricing Schedule will not apply to the trading of mini-option contracts” and that “[t]he Exchange will not commence trading of mini-option contracts until specific fees for mini-options contracts trading have been filed with the Commission.”³ The purpose of the proposed new Section A is to adopt the fees that are specific to Mini Options, as provided for in the Mini Options Listing Filing.

³ See SR-Phlx-2012-126, page 8. See also Securities Exchange Act Release No. 68132 (November 1, 2012), 77 FR 66904 (November 7, 2012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of Certain Securities).

New Section A will appear after the Preface section of the Pricing Schedule which contains definitions that apply to the entire Pricing Schedule, including new Section A. Except where different treatment is specified for Mini Options in Section A, the rest of the Pricing Schedule will apply to Mini Options in the same way it applies to all other options. For example, a Mini Options class will count as an options class assignment for purposes of determining the level of Streaming Quote Trader Fees and Remote Streaming Quote Trader Fees in Section VI. Cross references to Section A in the Table of Contents and Section IV.A, PIXL Pricing, will be updated to refer to Section B, and the Table of Contents will be updated to refer to Mini Options as new Section A.

Applicable Symbols. Proposed new Section A identifies the Mini Options symbols as AAPL7, AMZN7, GLD7, GOOG7 and SPY7. Accordingly, new Section A will apply exclusively to these new symbols.

Transaction Fees. New Section A provides for a “Mini Options Transaction Fee – Electronic” and for a “Mini-Options Transaction Fee – Floor and QCC”, both of which will apply in the Customer, Professional, Specialist and Market Maker, Broker-Dealer and Firm fee categories.⁴ In each case, the Exchange is currently setting these fees at \$0.00 but may in the future file proposed rule changes to amend the transaction fee level in one or more categories. The Exchange is establishing the separate Section A Pricing Schedule section for Mini Options transaction fees in order to facilitate differentiation in the future between Mini Options transaction fees and other options transaction fees.

⁴ Transaction fees for options other than Mini Options are currently found in Sections I through III of the Pricing Schedule.

PIXL Executions. The new Section A transaction fees will apply to PIXL executions in Mini Options rather than the PIXL Pricing fees set forth in Section IV.A.⁵

Payment for Order Flow. Pursuant to new Section A, Payment for Order Flow Fees set forth in Section II of the Pricing Schedule will not apply to Mini Options.⁶

Customer Rebate Program. New Section A clarifies that Mini Options volume will not be included in and will not be eligible for the Customer Rebate Program which is being moved from Section A of the Pricing Schedule to Section B of the Pricing Schedule.⁷

Routing Fees. Today, the Exchange calculates Routing Fees by assessing certain Exchange costs related to routing orders to away markets plus the away market's actual transaction fee.⁸ The Exchange assesses a \$0.05 per contract fixed Routing Fee when routing orders to the NASDAQ Options Market LLC ("NOM") and NASDAQ OMX BX,

⁵ PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXLSM). See Rule 1080(n) and Section IV of the Pricing Schedule.

⁶ The Payment for Order Flow program started on July 1, 2005 as a pilot and after a series of orders extending the pilot became effective on April 29, 2012. See Securities Exchange Act Release No. 52114 (July 22, 2005), 70 FR 44138 (August 1, 2005) (SR-Phlx-2005-44); 57851 (May 22, 2008), 73 FR 31177 (May 20, 2008)(SR-Phlx-2008-38); 55891 (June 11, 2007), 72 FR 333271 (June 15, 2007)(SR-Phlx-2007-39); 53754 (May 3, 2006), 71 FR 27301 (May 10, 2006) (SR-Phlx-2006-25); 53078 (January 9, 2006), 71 FR 2289 (January 13, 2006) (SR-Phlx-2005-88); 52568 (October 6, 2005), 70 FR 60120 (October 14, 2005) (SR-Phlx-2005-58); and 59841 (April 29, 2009), 74 FR 21035 (May 6, 2009) (SR-Phlx-2009-38).

⁷ The Exchange has recently described and amended its Customer Rebate Program. See SR-Phlx-2013-13. See also Securities Exchange Act Release No. 68924 (February 13, 2013), 78 FR 11916 (February 20, 2013).

⁸ Routing fees applicable to options other than Mini Options are set forth in Section V of the Pricing Schedule. Routing fees allow the Exchange to recoup costs it incurs for routing and executing orders in equity options to various away markets.

Inc. (“BX Options”) and a \$0.11 per contract fixed Routing Fee to all other options exchanges in addition to the actual transaction fee or rebate paid by the away market.⁹

With respect to the rebate, the Exchange pays a market participant the rebate offered by an away market where there is such a rebate. Any rebate available is netted against a fee assessed by the Exchange. With respect to orders routed to C2 Options Exchange, Incorporated (“C2”), the Exchange assesses non-Customer simple, non-complex orders in equity options (single stock) that are routed to C2 a Routing Fee which includes a fixed cost of \$0.11 per contract plus a flat rate of \$0.85 per contract, except with respect to Customers. With respect to Customers, the Exchange does not pass the rebate offered by C2, rather, Customer simple, non-complex orders in equity options (single stock) that are routed to C2 are assessed \$0.00 per contract.

The Exchange has recently filed a proposed rule change to make a number of pricing changes described in this paragraph to its Routing Fees. Effective April 1, 2013, the Exchange’s Routing Fees in Section V of the Pricing Schedule will be as follows:

⁹ The fixed Routing Fee is based on costs that are incurred by the Exchange when routing to an away market in addition to the away market’s transaction fee. For example, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC (“NOS”), a member of the Exchange and the Exchange’s exclusive order router, to route orders in options listed and open for trading on the PHLX XL system to destination markets. Each time NOS routes to away markets NOS incurs a clearing-related cost and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange also incurs administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees (“ORFs”) and technical costs associated with routing options. The transaction fee assessed by the Exchange is based on the away market’s actual transaction fee or rebate for a particular market participant at the time that the order was entered into the Exchange’s trading system. This transaction fee is calculated on an order-by-order basis, since different away markets charge different amounts. In the event that there is no transaction fee or rebate assessed by the away market, the only fee assessed is the fixed Routing Fee.

non-Customers will be assessed a \$0.95 per contract flat fee and the Customer Routing Fee will be dependent on the away market.¹⁰ With respect to Customer orders routed to NOM, the Exchange will assess a fixed fee of \$0.05 per contract (“Fixed Fee”) in addition to the actual transaction fee assessed by the away market would apply. With respect to Customer orders that are routed to BX Options, the Exchange will not assess a Routing Fee and will not pass the rebate. The Exchange will assess a Customer Routing Fee of \$0.11 per contract (“Fixed Fee”) in addition to the actual transaction fee when routing to an options exchange other than NOM and BX Options. Similar to Customer orders routed to BX, the Exchange will no longer pass any rebate paid by any away market for any Customer orders.

New Section A establishes Routing Fees for Mini Options that will apply instead of the existing Routing Fees set forth in Section V of the Pricing Schedule. Routing Fees for Customers are set at \$0.01 per contract in addition to the actual transaction fee assessed. If the away market pays a rebate, the Customer Routing Fee will be \$0.00. Routing Fees for all other participants (non-Customers) will be a flat rate of \$0.15 per contract and the Exchange will not charge non-Customers the actual transaction fee assessed by the away market or pass back any rebate.

QCC Transaction Fees and Rebates. New Section A establishes that QCC Transaction fees and rebates, set forth in Section II¹¹ of the Pricing Schedule, are not applicable to Section A of the Pricing Schedule.

¹⁰ See SR-Phlx-2013-23 (not yet published).

¹¹ QCC Orders are defined in Rule 1080(o).

Fee Caps. New Section A provides that the Monthly Market Maker Cap¹² and the Monthly Firm Fee Cap¹³, defined in Section II of the Pricing Schedule, will not be applicable to transactions in Mini Options. Therefore, any fees that may be assessed with respect to transactions in Mini Options will not be applied toward these caps.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section

¹² The Monthly Market Maker Cap is \$550,000 for: (i) electronic and floor Option Transaction 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 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 applies once a Specialist or Market Maker has reached the Monthly Market Maker Cap. The \$0.07 Service Fee applies 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 is not being assessed to a Specialist or Market Maker that does not reach the Monthly Market Maker Cap in a particular calendar month.

¹³ Firms are subject to a maximum fee of \$75,000 (“Monthly Firm Fee Cap”). Firm floor option transaction charges and QCC Transaction Fees as defined in Section II of the Pricing Schedule in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account.

¹⁴ 15 U.S.C. 78f(b).

6(b)(4) of the Act¹⁵ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Transaction Fees. The Exchange believes that the proposed Mini Options Transaction Fee-Electronic and Mini Options Transaction Fee – Floor and QCC, as well as the applicability of those fees to PIXL executions in Mini Options, are reasonable because those fees are set at zero in order to encourage market participants to transact Mini Options. They are also equitable and not unfairly discriminatory because all the market participant categories will be able to take advantage of the zero fee level and will therefore be treated in a uniform matter. Likewise, the Exchange believes that not applying QCC Transaction fees and rebates to transactions in Mini Options is reasonable, equitable and not unfairly discriminatory because the Exchange does not desire to assess certain transaction fees to encourage all market participants to transact Mini Options. No market participant would be assessed QCC Transaction fees or rebates.

Fee Caps. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to not apply the Monthly Market Maker Cap or Monthly Firm Fee Cap to Mini Options transaction fees because the Mini Options transaction fees are set at zero in any event for all market participants. The fee caps would not be affected by transactions in Mini Options for which transaction fees are not assessed in the first place.

Customer Rebate Program. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory that Mini Options volume will not be included in and will not be eligible for the Customer Rebate Program defined in newly relocated Section B of the Pricing Schedule. The Customer Rebate Program was established to incentivize

¹⁵ 15 U.S.C. 78f(b)(4).

market participants to increase the amount of Customer order flow they transact on the Exchange.¹⁶ The Customer Rebate Program is predicated on certain volume tiers that assume an option contract size of 100 shares. Due to the smaller size of the Mini Options contract, Mini Options will not make sense in the context of the volume tiers upon which the calculation of the Customer Rebate is based and the logic behind the Customer Rebate Program would not be achieved by including them. For this reason the Exchange believes that it is reasonable to not permit Mini Options to qualify in the Customer Rebate Program. Also, the Exchange would uniformly not pay rebates to any market participant transacting Customer Mini Options. Finally, redesignation of the caption of the Customer Rebate Program from A. to B. will provide clarity to the Pricing Schedule as it accommodates the new Mini Options Fees language in A.

Payment for Order Flow Fees. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory that the Payment for Order Flow fees set forth in Section II will not apply to Mini Options because the Exchange is not charging any transaction fees for these products at this time. By eliminating Payment for Order Flow Fees as applied to Mini Options the Exchange will incentivize members to transact in them. Further, Specialists and Market Makers will not be singled out from among other market participants for assessment of this fee. All market participants will be treated the same way by not having the Payment for Order Flow fees imposed on them with respect to Mini Options.

Proposed Mini Options Routing Fees - Customers. In the proposed new language in Section A of the Pricing Schedule, for Mini Options a \$0.01 per contract Routing Fee

¹⁶ See Securities Exchange Act Release No. 68924 (February 13, 2013), 78 FR 11916 (February 20, 2013).

will be charged for Customer orders in addition to the actual transaction fee assessed, provided that if the away market pays a rebate to the Exchange, the Customer Routing Fee is \$0.00. The Customer Routing Fees for Mini Options are reasonable because they will allow the Exchange to recoup and cover its costs of providing routing services for Customer orders in Mini Options just as it does for other standard equity options for which it incurs the same costs. The Exchange believes this Routing Fee for Customers in Mini Options is reasonable because it is lower than the other fixed Routing Fees for standard options, as discussed above, which are assessed with respect to Customer transactions in other options pursuant to Section V of the Pricing Schedule. Additionally, the Customer Routing Fees will be similar to the new Routing Fees that the Exchange recently filed and which will be operative on April 1, 2013, except the fixed cost will be lower in the case of Mini Options. Similar to that filing, the Exchange would not pass rebates back to Customers, but would also not assess a Customer a Routing Fee if a rebate were paid by the away market. The Exchange believes that its proposal to not pass a rebate that is offered by an away market for Customers orders in Mini Options is reasonable because to the extent that another market is paying a rebate, the Exchange will not assess a Routing Fee for that transaction. If a market participant desires the rebate, the market participant has the option to direct the order to that away market. Other options exchanges today do not pass the rebate.¹⁷

The Exchange believes the Routing Fees for Mini Options for Customers are equitable and not unfairly discriminatory because the Exchange would uniformly assess the same Routing Fees to all Customers, and because market participants have the ability

¹⁷ See CBOE's Fees Schedule and International Securities Exchange LLC's ("ISE") Fee Schedule.

to directly route orders in Mini Options to an away market and avoid the Routing Fee. Also, market participants may submit orders to the Exchange as ineligible for routing or “DNR” to avoid Routing Fees. The Exchange believes that its proposal to not pass a rebate that is offered by an away market for Customer Mini Option orders is equitable and not unfairly discriminatory because the Exchange would not pay such a rebate on any Customer Mini Option order.

Proposed Mini Options Routing Fees - Non-Customers. In the proposed new language in Section A of the Pricing Schedule, Routing Fees for Mini Options for all participants other than Customers (“non-Customers”) will be a flat fee of \$0.15 per contract. The Exchange believes this fee is reasonable because it is lower than the \$0.95 per contract flat fee that will be in effect on April 1, 2013 for non-Customers orders routed to all options exchanges (other than BX Options and NOM) for orders in options other than Mini Options.¹⁸ The non-Customer Routing Fees for Mini Options are reasonable because they will allow the Exchange to recoup and cover its costs of providing routing services for non-Customer orders in Mini Options just as it does for other equity options for which it incurs the same costs. The Exchange believes that its proposal to amend its non-Customer Routing Fees from a fixed fee plus actual transaction charges to a flat rate is reasonable because the flat rate makes it easier for market participants to anticipate the Routing Fees which they would be assessed at any given time. The Exchange believes that assessing all non-Customer orders the same flat rate

¹⁸ The Exchange believes that the proposed non-Customer Routing Fee for Mini Options that are routed to BX and NOM is reasonable even though it is higher than \$0.05 Routing Fee assessed with respect to non-Customer orders routed to BX and NOM today in options other than Mini Options, inasmuch as the Exchange is not charging any transaction fees with respect to Mini Options.

will provide market participants with certainty with respect to Routing Fees. While each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets, including clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options, the Exchange believes that the proposed Routing Fees will enable it to recover the costs it incurs to route non-Customer orders to away markets. Other exchanges similarly assess a fixed rate fee to route non-Customer orders.¹⁹

The Exchange believes that its proposal to amend the non-Customer Routing Fees from a fixed fee plus actual transaction charges to a flat rate is equitable and not unfairly discriminatory because the Exchange would uniformly assess the same Routing Fees to all non-Customer market participants. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or a slight loss for non-Customer orders routed to and executed at away markets. The proposed Routing Fee for non-Customer orders is an approximation of the maximum fees the Exchange will be charged for such executions, including costs, at away markets. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services for non-Customer orders. The Exchange believes that the fixed rate non-Customer Routing Fee is equitable and not unfairly discriminatory because market participants have the ability to directly route orders to an away market and avoid

¹⁹ BATS Exchange, Inc. ("BATS") assesses non-Customer fixed rates of \$0.57 and \$0.95 per contract when routing to away markets. See BATS BZX Exchange Fee Schedule. The Chicago Board Options Exchange Incorporated ("CBOE") assesses non-Customer orders a \$0.50 per contract routing fee in addition to the customary CBOE execution charges. See CBOE's Fees Schedule.

the Routing Fee. Also, market participants may submit orders to the Exchange as ineligible for routing or “DNR” to avoid Routing Fees. It is important to note that when orders are routed to an away market they are routed based on price first.

The Exchange believes that its proposal to not pass a rebate that is offered by an away market for non-Customers orders is reasonable because to the extent that another market is paying a rebate, the Exchange will assess a \$0.15 per contract fee as its total cost in each instance. The Routing Fee is transparent and simple. If a market participant desires the rebate, the market participant has the option to direct the order to that away market. Other options exchanges today do not pass the rebate. The Exchange believes that its proposal to not pass a rebate that is offered by an away market for non-Customers orders is equitable and not unfairly discriminatory because the Exchange would not pay such a rebate on any non-Customer order. The Exchange believes the Routing Fees for Mini Options for non-Customers are equitable and not unfairly discriminatory because the Exchange would uniformly assess the same Routing Fees to all non-Customer market participants.

Finally, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess different fees for Customers orders as compared to non-Customer orders because the Exchange has traditionally assessed lower fees to Customers as compared to non-Customers. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also

assess lower Routing Fees for customer orders as compared to non-customer orders in standard options.²⁰

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 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.

The Mini Options are a new product that will commence trading on the Exchange on March 28, 2013. The Exchange believes that incentivizing market participants to transact Mini Options by not assessing transaction fees and certain other fees encourages competition in these products. There is no intra-market competition as the Exchange will treat all market participants in a like manner with respect to the transaction fees. Also, the Exchange believes that because other markets will also list Mini Options there is no undue burden on intermarket competition because market participants will be able to

²⁰ BATS assesses lower customer routing fees as compared to non-customer routing fees per the away market. For example BATS assesses ISE customer routing fees of \$0.30 per contract and an ISE non-customer routing fee of \$0.57 per contract. See BATS BZX Exchange Fee Schedule.

select the venue where they will trade these products. In terms of Routing, the Exchange believes that assessing Customers lower fees as compared to Non-Customers and assessing the same Routing Fees to all Non-Customers regardless of the venue does not create an undue burden on competition. The Exchange has traditionally assessed no or lower fees to Customers. Also, the Exchange believes that because Mini Options represent 1/10th of the size of a standard option contract, reduced Routing Fees will not misalign the cost to transact Mini Options.

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

Written comments were neither solicited nor received.

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.²¹ 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:

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2013-35 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-2013-35. 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-2013-35 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.²²

Kevin M O'Neill
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

NASDAQ OMX PHLX LLC¹ PRICING SCHEDULE

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**Table of Contents
Sections**

Preface

A. Mini Options Fees

[A]B. Customer Rebate Program

* * * * *

PREFACE

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

* * * * *

A. Mini Options Fees

Mini Options symbols are AAPL7, AMZN7, GLD7, GOOG7, SPY7

	<u>Customer</u>	<u>Professional</u>	<u>Specialist and Market Maker</u>	<u>Broker- Dealer</u>	<u>Firm</u>
<u>Mini Options Transaction Fee - Electronic</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
<u>Mini Options Transaction Fee - Floor and QCC</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>

PIXL Pricing does not apply to PIXL Order executions in Mini Options.

Payment for Order Flow fees and QCC Transaction Fees and rebates do not apply to Mini Options.

Routing Fees set forth in Section V do not apply to Mini Options. Instead, Routing Fees for Customers for Mini Options are \$0.01 per contract in addition to the actual

transaction fee assessed. If the away market pays a rebate to the Exchange, the Routing Fee for Customers will be \$0.00. Routing Fees for Mini Options for all other participants will be \$0.15 per contract.

The Monthly Market Maker Cap and the Monthly Firm Fee Cap set forth in Section II will not apply to transactions in Mini Options.

Mini Options volume will not be included in and will not be eligible for the Customer Rebate Program.

[A]B. Customer Rebate Program

* * * * *

IV. Other Transaction Fees

A. PIXL Pricing

Initiating Order (Sections I and II) \$0.07 per contract or \$0.05 per contract if Customer Rebate Program Threshold Volume defined in Section [A] B is greater than 100,000 contracts per day in a month. 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] B will receive the PIXL Initiating Order discount as described above.

* * * * *