

Required fields are shown with yellow backgrounds and asterisks.

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

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|---------------------------------------------------------------------------|--------------------------|--------------------------|-------------------------------------------------|--------------------------------------|--------------------------|
| 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"/> |
| Pilot <input type="checkbox"/> | | | Rule | | |
| Extension of Time Period for Commission Action * <input type="checkbox"/> | | | <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) | |
| Date Expires * <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) | |

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| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input type="checkbox"/> Section 806(e)(2) <input type="checkbox"/> | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input type="checkbox"/> |
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| Exhibit 2 Sent As Paper Document <input type="checkbox"/> | Exhibit 3 Sent As Paper Document <input type="checkbox"/> |
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Description

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

Relating to Permit Fees and Other Floor Fees

Contact Information

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

First Name * Angela Last Name * Dunn

Title * Associate General Counsel

E-mail * angela.dunN@nasdaqomx.com

Telephone * (215) 496-5692 Fax

Signature

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

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

(Title *)

Date 05/21/2013 Executive Vice President and General Counsel

By Edward S. Knight

(Name *)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

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

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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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 Permit Fee and certain Options Trading Floor Fees, including a technical amendment to the Pricing Schedule.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on June 3, 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 Angela Saccomandi Dunn, Associate General Counsel, at (215) 496-5692.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

3. 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 increase the Permit Fee in Section VI, entitled "Membership Fees" at Part A entitled "Permit and Registration Fees" of the Pricing Schedule to recoup costs associated with the administration of the Exchange's members. The Exchange also proposes to amend Section VII entitled "Other Member Fees" at Part A entitled "Options Trading Floor Fees" of the Pricing Schedule to eliminate the Trading/Administrative Booths Fee and the Specialist Post Fee and increase the Floor Facility Fees. The Exchange believes that the increases are necessary to keep pace with escalating technology costs, costs of certain floor-related charges due to a rise in occupancy expenses and rising overhead costs associated with maintaining the trading floor.

The Exchange also proposes to make a technical amendment to the Pricing Schedule to eliminate certain unnecessary text in Chapter VI, Part A.

Permit Fee

The Exchange assesses two different Permit Fees based on whether a member or member organization is transacting business on the Exchange. The Exchange assesses members and member organizations that are transacting business on the Exchange a Permit Fee of \$2,100 per month. A 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 common ownership, transacts at least one options trade in

a Phlx house account that is assigned to one of the member organizations under common ownership.³ The Exchange assesses members and member organizations that are not transacting business on the Exchange a Permit Fee of \$7,500 per month. A member or member organization is assessed the \$7,500 Permit Fee for not transacting business on the Exchange if that member is either: (i) not a PSX Only Participant;⁴ or (ii) not engaged in an options business at Phlx in a particular month. In addition, a member or member organization that sponsors an options participant⁵ would pay an additional Permit Fee for each sponsored options participant.

The Exchange is proposing to increase the \$2,100 Permit Fee for members transacting business on the Exchange to \$2,150 per month. The Exchange is seeking to recoup costs incurred from the membership administration function. The Exchange is not amending the Permit Fee for members who are not transacting business on the Exchange. The Exchange proposes to make corresponding amendments to Section VI, Part A where the permit fee is referenced.

³ Common ownership means 75% common ownership or control.

⁴ Applicants that apply for membership solely to participate in the NASDAQ OMX PSX equities market are not assessed a Permit Fee, Application Fee, Initiation Fee, or Account Fee. See Securities Exchange Act Release No. 61863 (April 7, 2010), 75 FR 20021 (April 16, 2010) (SR-Phlx-2010-54).

⁵ See Exchange Rule 1094 titled Sponsored Participants. A Sponsored Participant may obtain authorized access to the Exchange only if such access is authorized in advance by one or more Sponsoring Member Organizations. Sponsored Participants must enter into and maintain participant agreements with one or more Sponsoring Member Organizations establishing a proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Exchange.

Other Member Fees

The Exchange proposes to eliminate the Trading/Administrative Booths fee of \$300 per month fee paid by floor brokers and clearing firms⁶ and the Specialist Post Fee of \$3,000 per month paid by Specialist units. The Trading/Administrative Booth space is physical space on the Exchange's trading floor, which space typically is used by floor brokers. The Specialist Post is physical space on the Exchange's trading floor which is used by Specialist units. The Exchange proposes to amend the Floor Facility fee to cover the costs of operating the trading floor.

The Exchange proposes to increase the Floor Facility fee from \$300 to \$330 per month. Today, the Floor Facility fee is applicable to Registered Options Traders,⁷ individual Specialists⁸ and SQTs.⁹ The Floor Facility fee was intended to fairly allocate costs attendant to providing members with services necessary to the conduct of business on the floor of the Exchange. The Exchange proposes to assess the proposed increased

⁶ Today, any floor participant may elect to obtain a booth on the Exchange's trading floor.

⁷ A Registered Options Trader ("ROT") includes a Streaming Quote Trader ("SQT"), a Remote Streaming Quote Trader ("RSQT") and a Non-SQT, which by definition is neither a SQT or a RSQT. An ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

⁸ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). Each individual Specialist is assessed this fee and the Specialist unit is assessed the Specialist Post Fee of \$3,000 per month. In the instance that an individual Specialist is also an SQT, that member will only pay a \$300 Floor Facility Fee per month; that Specialist would not be assessed the fee for each capacity. See Securities Exchange Act Release No. 66086 (January 3, 2012), 77 FR 1111 (January 9, 2012).

⁹ An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. If a ROT or SQT also determined to acquire a Trading/Administrative Booth, they would also be assessed that fee as well.

Floor Facility fee to Clerks,¹⁰ excluding Inactive Nominees,¹¹ and Floor Brokers in addition to ROTs (including SQTs) and individual Specialists. The Exchange proposes to increase this fee to offset the increased costs of operating a trading floor facility and the elimination of the Trading/Administrative Booths fee and the Specialist Post fee.

Technical Amendment

The Exchange proposes to amend certain unnecessary language in Chapter VI, Section A that was recently added to the Pricing Schedule to provide a temporary waiver of the Application and Initiation Fees for current Remote Streaming Quote Trader Organizations.¹² The Exchange implemented the waiver for the time period from April 24, 2013 to May 13, 2013.¹³ At this time, the Exchange proposes to remove this text from the Pricing Schedule as it is unnecessary.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is

¹⁰ Pursuant to Exchange Rule 1090, the term “Clerk” means any registered on-floor person employed by or associated with a member or member organization who is not a member and is not eligible to effect transactions on the Options Floor as a Specialist, ROT, or Floor Broker. For purposes of this Rule, an Inactive Nominee shall be deemed a Clerk. See Rule 1090.

¹¹ Pursuant to Exchange Rule 925, a member organization may designate an individual as an “Inactive Nominee.” To be eligible to be an inactive nominee an individual must be approved as eligible to hold a permit in accordance with the Exchange's By-Laws and Rules. An inactive nominee has no rights and privileges of a permit holder until the inactive nominee becomes an effective permit holder and all applicable Exchange fees are paid. See Exchange Rule 925. The Inactive Nominee would be assessed the fee for the 6 months during which the Inactive Nominee maintains its status with the Exchange.

¹² See Securities Exchange Act Release No. 69500 (May 2, 2013), 78 FR 26841 (May 8, 2013).

¹³ Id.

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 provides for an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Permit Fee

The Exchange believes that the proposed increase to the Permit Fee for members transacting business on the Exchange is reasonable because the Exchange is seeking to recoup costs related to membership administration. The proposed fee is in the range of similar fees at other exchanges and less than other fees.¹⁶ In addition, the Exchange believes that the Permit Fee is equitable and not unfairly discriminatory, because unlike other exchanges, Phlx's Permit Fees are the same for every options permit holder that is conducting business at the Exchange. The Exchange also believes that the increased fee

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ See the Chicago Board Options Exchange, Incorporated's Fees Schedule. Per month a Market Maker Trading Permit is \$5,500, a SPX Tier Appointment is \$3,000, a VIX Tier Appointment is \$2,000, a Floor Broker Trading Permit is \$9,000, an Electronic Access Permit is \$1,600 and there is no access fee for a CBSX Trading Permit. See also the International Securities Exchange LLC's Schedule of Fees. Per month an Electronic Access Member is assessed \$500.00 for membership and a market maker is assessed from \$2,000 to \$4,000 per membership depending on the type of market maker. See also C2 Options Exchange, Incorporated's Fees Schedule. Per month, a market-maker is assessed a \$5,000 permit fee, an Electronic Access Permit is assessed a \$1,000 permit fee and a SPXM Tier appointment is assessed a \$4,000 fee after March 31, 2013. See also NYSE Arca, Inc.'s Fee Schedule. Per month, a Floor Broker, Office and Clearing Firm are assessed a \$1,000 per month fee for the first Options Trading Permit ("OTP") and \$250 thereafter, and a market maker is assessed a \$4,000 per month fee for one to four OTPs and \$1,000 thereafter.

is equitable and not unfairly discriminatory because the Permit Fee for not transacting business on the Exchange remains substantially higher as is the case today.

Other Member Fees

The Exchange believes that it is reasonable to eliminate the Trading/Administrative Booths fee and Specialist Post fee because the Exchange believes those fees no longer adequately cover the costs of operating the trading floor. In addition, the Exchange is seeking to encourage members and member organization to utilize and expand use of the space available on its trading floor. The Exchange believes that it is equitable and not unfairly discriminatory to eliminate the Trading/Administrative Booths fee and Specialist Post fee because no market participant would be assessed these fees.

The Exchange believes that increasing the Floor Facility fee is reasonable because the fee offsets the increased costs of operating a trading floor facility. The increases are necessary to keep pace with technology costs, costs of certain floor-related charges due to a rise in occupancy expenses and rising overhead costs associated with maintaining the trading floor. Further, the proposed modifications to the Floor Facility fee, coupled with the elimination of the Trading/Administrative Booths fee and the Specialist Post fee better recoups the costs of operating a trading floor.

The Exchange believes that increasing the Floor Facility Fee is equitable and not unfairly discriminatory because the fee will be applied uniformly to all members and their respective staff, who operate routinely from the floor of the Exchange. The Exchange believes this fee is indicative of the costs attributable to these categories of

floor participants and therefore the fee is being equitable assessed and is not unfairly discriminatory.

The Exchange believes that it is equitable and not unfairly discriminatory to assess Clerks the Floor Facility Fee in addition to the other market participants as discussed above. Clerks are registered on-floor personnel that utilize the Exchange's services and are responsible for the rise in technology and other overhead costs. Inactive Nominees are considered a Clerk, but also pay additional fees associated with being an Inactive Nominee¹⁷ and do not routinely utilize the floor in the manner as other Clerks supporting member's day-to-day operations. The Exchange today assesses floor brokers the Trading/Administrative Booths fee, this fee of \$300 per month is being eliminated and instead floor brokers would pay the \$330 per month proposed Floor Facility fee. While this results in an increased cost of \$300 per month for Floor Brokers, the Exchange believes that the fee is equitable and not unfairly discriminatory because as mentioned above, floor brokers utilize the facilities of the Exchange as do Clerks, individuals Specialists and ROTs. In addition, the Exchange anticipates that most floor brokers will experience an overall reduction in costs due to the elimination of the

¹⁷ Inactive Nominees are assessed an Inactive Nominee Fee of \$600 for 6 months of eligibility. The member organization is assessed \$100 per month for the applicable six month period unless the member organization provides proper notice of its intent to terminate an inactive nominee prior to the first day of the next billing month. An inactive nominee's status expires after six months unless it has been reaffirmed in writing by the member organization or is sooner terminated. A member organization is assessed the Inactive Nominee Fee every time the status is reaffirmed. An inactive nominee is also assessed Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in their inactive nominee status. However, an inactive nominee would not be assessed Application and Initiation Fees if such inactive nominee applied for membership without any lapse in that individual's association with a particular member organization. An Inactive Nominee is also assessed the Trading Floor Personnel Registration Fee.

Trading/Administrative Booths fee. The Exchange's proposal to distribute the cost to each of these market participants applies the fee to the recipients who consume the services offered at the Exchange to conduct trading on the floor. The elimination of the Specialist Post fee will result in the elimination of a \$3,000 per month charge for Specialist units. The individual Specialists are assessed the Floor Facility fee today and would experience the increase of \$30 per month.

Technical Amendment

The Exchange's proposal to remove text in Chapter VI, Section A related to a waiver of the Application and Initiation Fees for current RSQTOs for the time period from April 24, 2013 to May 13, 2013 is reasonable, equitable and not unfairly discriminatory because the rule text is unnecessary and inapplicable to any market participant at this time.

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 is proposing to increase the Permit Fees which are applicable to members and member organizations transacting business on the Exchange. The increase is attributable to a rise in costs at the Exchange and is assessed to those members and member organizations that are currently transacting business on Phlx. The increase narrows the gap between permit holders transacting business on the Exchange and those members that are not transacting business on the Exchange. This fee does not impose an undue burden on competition

The Exchange's proposal to eliminate the Trading/Administrative Booths Fee because those booths no longer exist does not impose an undue burden on competition because the Exchange would not assess this fee to any market participant. Increasing the Floor Facility Fees and allocating that fee to Clerks and Floor Brokers does not create an undue burden on competition because the Exchange is allocating its costs among those market participants that benefit from the Exchange' services. The Exchange is also eliminating the Trading/Administrative Booths Fee that is borne today by floor brokers and clearing firms.

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

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁸ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

5. Applicable portion of the Exchange's Pricing Schedule.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2013-58)

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend Permit Fees and Other Floor Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 21, 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 Permit Fee and certain Options Trading Floor Fees, including a technical amendment to the Pricing Schedule.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on June 3, 2013.

The text of the proposed rule change is 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.

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 increase the Permit Fee in Section VI, entitled “Membership Fees” at Part A entitled “Permit and Registration Fees” of the Pricing Schedule to recoup costs associated with the administration of the Exchange’s members. The Exchange also proposes to amend Section VII entitled “Other Member Fees” at Part A entitled “Options Trading Floor Fees” of the Pricing Schedule to eliminate the Trading/Administrative Booths Fee and the Specialist Post Fee and increase the Floor Facility Fees. The Exchange believes that the increases are necessary to keep pace with escalating technology costs, costs of certain floor-related charges due to a rise in occupancy expenses and rising overhead costs associated with maintaining the trading floor.

The Exchange also proposes to make a technical amendment to the Pricing Schedule to eliminate certain unnecessary text in Chapter VI, Part A.

Permit Fee

The Exchange assesses two different Permit Fees based on whether a member or member organization is transacting business on the Exchange. The Exchange assesses members and member organizations that are transacting business on the Exchange a Permit Fee of \$2,100 per month. A 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 common ownership, transacts at least one options trade in a Phlx house account that is assigned to one of the member organizations under common ownership.³ The Exchange assesses members and member organizations that are not transacting business on the Exchange a Permit Fee of \$7,500 per month. A member or member organization is assessed the \$7,500 Permit Fee for not transacting business on the Exchange if that member is either: (i) not a PSX Only Participant;⁴ or (ii) not engaged in an options business at Phlx in a particular month. In addition, a member or member organization that sponsors an options participant⁵ would pay an additional Permit Fee for each sponsored options participant.

³ Common ownership means 75% common ownership or control.

⁴ Applicants that apply for membership solely to participate in the NASDAQ OMX PSX equities market are not assessed a Permit Fee, Application Fee, Initiation Fee, or Account Fee. See Securities Exchange Act Release No. 61863 (April 7, 2010), 75 FR 20021 (April 16, 2010) (SR-Phlx-2010-54).

⁵ See Exchange Rule 1094 titled Sponsored Participants. A Sponsored Participant may obtain authorized access to the Exchange only if such access is authorized in advance by one or more Sponsoring Member Organizations. Sponsored Participants must enter into and maintain participant agreements with one or more Sponsoring Member Organizations

The Exchange is proposing to increase the \$2,100 Permit Fee for members transacting business on the Exchange to \$2,150 per month. The Exchange is seeking to recoup costs incurred from the membership administration function. The Exchange is not amending the Permit Fee for members who are not transacting business on the Exchange. The Exchange proposes to make corresponding amendments to Section VI, Part A where the permit fee is referenced.

Other Member Fees

The Exchange proposes to eliminate the Trading/Administrative Booths fee of \$300 per month fee paid by floor brokers and clearing firms⁶ and the Specialist Post Fee of \$3,000 per month paid by Specialist units. The Trading/Administrative Booth space is physical space on the Exchange's trading floor, which space typically is used by floor brokers. The Specialist Post is physical space on the Exchange's trading floor which is used by Specialist units. The Exchange proposes to amend the Floor Facility fee to cover the costs of operating the trading floor.

The Exchange proposes to increase the Floor Facility fee from \$300 to \$330 per month. Today, the Floor Facility fee is applicable to Registered Options Traders,⁷

establishing a proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Exchange.

⁶ Today, any floor participant may elect to obtain a booth on the Exchange's trading floor.

⁷ A Registered Options Trader ("ROT") includes a Streaming Quote Trader ("SQT"), a Remote Streaming Quote Trader ("RSQT") and a Non-SQT, which by definition is neither a SQT or a RSQT. An ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

individual Specialists⁸ and SQTs.⁹ The Floor Facility fee was intended to fairly allocate costs attendant to providing members with services necessary to the conduct of business on the floor of the Exchange. The Exchange proposes to assess the proposed increased Floor Facility fee to Clerks,¹⁰ excluding Inactive Nominees,¹¹ and Floor Brokers in addition to ROTs (including SQTs) and individual Specialists. The Exchange proposes to increase this fee to offset the increased costs of operating a trading floor facility and the elimination of the Trading/Administrative Booths fee and the Specialist Post fee.

Technical Amendment

The Exchange proposes to amend certain unnecessary language in Chapter VI, Section A that was recently added to the Pricing Schedule to provide a temporary waiver

⁸ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). Each individual Specialist is assessed this fee and the Specialist unit is assessed the Specialist Post Fee of \$3,000 per month. In the instance that an individual Specialist is also an SQT, that member will only pay a \$300 Floor Facility Fee per month; that Specialist would not be assessed the fee for each capacity. See Securities Exchange Act Release No. 66086 (January 3, 2012), 77 FR 1111 (January 9, 2012).

⁹ An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. If a ROT or SQT also determined to acquire a Trading/Administrative Booth, they would also be assessed that fee as well.

¹⁰ Pursuant to Exchange Rule 1090, the term “Clerk” means any registered on-floor person employed by or associated with a member or member organization who is not a member and is not eligible to effect transactions on the Options Floor as a Specialist, ROT, or Floor Broker. For purposes of this Rule, an Inactive Nominee shall be deemed a Clerk. See Rule 1090.

¹¹ Pursuant to Exchange Rule 925, a member organization may designate an individual as an “Inactive Nominee.” To be eligible to be an inactive nominee an individual must be approved as eligible to hold a permit in accordance with the Exchange's By-Laws and Rules. An inactive nominee has no rights and privileges of a permit holder until the inactive nominee becomes an effective permit holder and all applicable Exchange fees are paid. See Exchange Rule 925. The Inactive Nominee would be assessed the fee for the 6 months during which the Inactive Nominee maintains its status with the Exchange.

of the Application and Initiation Fees for current Remote Streaming Quote Trader Organizations.¹² The Exchange implemented the waiver for the time period from April 24, 2013 to May 13, 2013.¹³ At this time, the Exchange proposes to remove this text from the Pricing Schedule as it is unnecessary.

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

Permit Fee

The Exchange believes that the proposed increase to the Permit Fee for members transacting business on the Exchange is reasonable because the Exchange is seeking to recoup costs related to membership administration. The proposed fee is in the range of similar fees at other exchanges and less than other fees.¹⁶ In addition, the Exchange

¹² See Securities Exchange Act Release No. 69500 (May 2, 2013), 78 FR 26841 (May 8, 2013).

¹³ Id.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ See the Chicago Board Options Exchange, Incorporated's Fees Schedule. Per month a Market Maker Trading Permit is \$5,500, a SPX Tier Appointment is \$3,000, a VIX Tier Appointment is \$2,000, a Floor Broker Trading Permit is \$9,000, an Electronic Access Permit is \$1,600 and there is no access fee for a CBSX Trading Permit. See also the International Securities Exchange LLC's Schedule of Fees. Per month an Electronic Access Member is assessed \$500.00 for membership and a market maker is assessed from \$2,000 to \$4,000 per membership depending on the type of market maker. See also

believes that the Permit Fee is equitable and not unfairly discriminatory, because unlike other exchanges, Phlx's Permit Fees are the same for every options permit holder that is conducting business at the Exchange. The Exchange also believes that the increased fee is equitable and not unfairly discriminatory because the Permit Fee for not transacting business on the Exchange remains substantially higher as is the case today.

Other Member Fees

The Exchange believes that it is reasonable to eliminate the Trading/Administrative Booths fee and Specialist Post fee because the Exchange believes those fees no longer adequately cover the costs of operating the trading floor. In addition, the Exchange is seeking to encourage members and member organization to utilize and expand use of the space available on its trading floor. The Exchange believes that it is equitable and not unfairly discriminatory to eliminate the Trading/Administrative Booths fee and Specialist Post fee because no market participant would be assessed these fees.

The Exchange believes that increasing the Floor Facility fee is reasonable because the fee offsets the increased costs of operating a trading floor facility. The increases are necessary to keep pace with technology costs, costs of certain floor-related charges due to a rise in occupancy expenses and rising overhead costs associated with maintaining the trading floor. Further, the proposed modifications to the Floor Facility fee, coupled with

C2 Options Exchange, Incorporated's Fees Schedule. Per month, a market-maker is assessed a \$5,000 permit fee, an Electronic Access Permit is assessed a \$1,000 permit fee and a SPXM Tier appointment is assessed a \$4,000 fee after March 31, 2013. See also NYSE Arca, Inc.'s Fee Schedule. Per month, a Floor Broker, Office and Clearing Firm are assessed a \$1,000 per month fee for the first Options Trading Permit ("OTP") and \$250 thereafter, and a market maker is assessed a \$4,000 per month fee for one to four OTPs and \$1,000 thereafter.

the elimination of the Trading/Administrative Booths fee and the Specialist Post fee better recoups the costs of operating a trading floor.

The Exchange believes that increasing the Floor Facility Fee is equitable and not unfairly discriminatory because the fee will be applied uniformly to all members and their respective staff, who operate routinely from the floor of the Exchange. The Exchange believes this fee is indicative of the costs attributable to these categories of floor participants and therefore the fee is being equitable assessed and is not unfairly discriminatory.

The Exchange believes that it is equitable and not unfairly discriminatory to assess Clerks the Floor Facility Fee in addition to the other market participants as discussed above. Clerks are registered on-floor personnel that utilize the Exchange's services and are responsible for the rise in technology and other overheard costs. Inactive Nominees are considered a Clerk, but also pay additional fees associated with being an Inactive Nominee¹⁷ and do not routinely utilize the floor in the manner as other Clerks supporting member's day-to-day operations. The Exchange today assesses floor brokers the Trading/Administrative Booths fee, this fee of \$300 per month is being eliminated

¹⁷ Inactive Nominees are assessed an Inactive Nominee Fee of \$600 for 6 months of eligibility. The member organization is assessed \$100 per month for the applicable six month period unless the member organization provides proper notice of its intent to terminate an inactive nominee prior to the first day of the next billing month. An inactive nominee's status expires after six months unless it has been reaffirmed in writing by the member organization or is sooner terminated. A member organization is assessed the Inactive Nominee Fee every time the status is reaffirmed. An inactive nominee is also assessed Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in their inactive nominee status. However, an inactive nominee would not be assessed Application and Initiation Fees if such inactive nominee applied for membership without any lapse in that individual's association with a particular member organization. An Inactive Nominee is also assessed the Trading Floor Personnel Registration Fee.

and instead floor brokers would pay the \$330 per month proposed Floor Facility fee. While this results in an increased cost of \$300 per month for Floor Brokers, the Exchange believes that the fee is equitable and not unfairly discriminatory because as mentioned above, floor brokers utilize the facilities of the Exchange as do Clerks, individuals Specialists and ROTs. In addition, the Exchange anticipates that most floor brokers will experience an overall reduction in costs due to the elimination of the Trading/Administrative Booths fee. The Exchange's proposal to distribute the cost to each of these market participants applies the fee to the recipients who consume the services offered at the Exchange to conduct trading on the floor. The elimination of the Specialist Post fee will result in the elimination of a \$3,000 per month charge for Specialist units. The individual Specialists are assessed the Floor Facility fee today and would experience the increase of \$30 per month.

Technical Amendment

The Exchange's proposal to remove text in Chapter VI, Section A related to a waiver of the Application and Initiation Fees for current RSQTOs for the time period from April 24, 2013 to May 13, 2013 is reasonable, equitable and not unfairly discriminatory because the rule text is unnecessary and inapplicable to any market participant at this time.

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 is proposing to increase the Permit Fees which are applicable to

members and member organizations transacting business on the Exchange. The increase is attributable to a rise in costs at the Exchange and is assessed to those members and member organizations that are currently transacting business on Phlx. The increase narrows the gap between permit holders transacting business on the Exchange and those members that are not transacting business on the Exchange. This fee does not impose an undue burden on competition

The Exchange's proposal to eliminate the Trading/Administrative Booths Fee because those booths no longer exist does not impose an undue burden on competition because the Exchange would not assess this fee to any market participant. Increasing the Floor Facility Fees and allocating that fee to Clerks and Floor Brokers does not create an undue burden on competition because the Exchange is allocating its costs among those market participants that benefit from the Exchange' services. The Exchange is also eliminating the Trading/Administrative Booths Fee that is borne today by floor brokers and clearing firms.

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

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁸ 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-2013-58 on the subject line.

Paper comments:

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

- 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-2013-58. 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-2013-58 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.¹⁹

Kevin M. O'Neill
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).

Exhibit 5

New text is underlined; deleted text is in brackets.

NASDAQ OMX PHLX LLC¹ PRICING SCHEDULE

* * * * *

VI. MEMBERSHIP FEES**A. Permit and Registration Fees**

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

| | |
|----------------------------------|--------------------------|
| Transacting business on Phlx | \$2,1[0]50 ¹⁶ |
| Not transacting business on Phlx | \$7,500 ¹⁷ |

¹⁶A member or member organization will pay an additional permit fee for each sponsored options participant.

¹⁷A member or member organization will be assessed a \$7,500 monthly fee if that member is (i) not a PSX Only Participant; or (ii) not engaged in an options business at Phlx in a particular month.

¹⁵A member or member organization will be assessed the \$2,1[0]50 monthly Permit Fee if that member or member organization: (1) transacts its option orders in its assigned Phlx house account in a particular month; or (2) is a clearing member of The Options Clearing Corporation or a Floor Broker; or (3) for those member organizations which are under Common Ownership, transacts at least one options trade in a Phlx house account that is assigned to one of the member organizations under Common Ownership.

Application Fee^{14, 18, [#]}

¹⁸An applicant will be assessed the Application Fee each time an applicant applies for membership, notwithstanding the fact that the applicant may have been a former permit holder.

\$350

Application Fee for Lapsed Applications¹⁴ \$350

Transfer of Affiliation Fee¹⁹ \$350

¹⁹The Exchange will not assess the Initiation Fee on a permit holder who applies to transfer affiliation from one member organization to another member organization if the permit holder continuously held his or her permit without any

lapse in membership.

| | |
|-----------------------------------|--------------------------------------|
| Account Fee ¹⁴ | \$50.00 monthly |
| Initiation Fee ^{14,[#]} | \$1,500 |
| Inactive Nominee Fee | \$600 for 6 months ^{20, 21} |

²⁰The member organization will be assessed \$100 per month for the applicable six month period unless the member organization provides proper notice of its intent to terminate an inactive nominee prior to the first day of the next billing month.

²¹An inactive nominee's status expires after six months unless it has been reaffirmed in writing by the member organization or is sooner terminated. A member organization will be assessed the Inactive Nominee Fee every time the status is reaffirmed. An inactive nominee is also assessed Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in their inactive nominee status. However, an inactive nominee would not be assessed Application and Initiation Fees if such inactive nominee applied for membership without any lapse in that individual's association with a particular member organization. An Inactive Nominee is also assessed the Trading Floor Personnel Registration Fee.

¹⁴ *Applicants that apply for membership solely to participate in the NASDAQ OMX PSX equities market are not assessed a Permit Fee, Application Fee, Initiation Fee, or Account Fee. Should such approved member or member organization subsequently elect to engage in business on Phlx XL II, the Exchange's options platform, the monthly Permit Fee, Initiation Fee and Account Fee will apply. For purposes of assessing the Permit Fee, an existing member or member organization that does not conduct an options business on Phlx XL II, but only conducts business on NASDAQ OMX PSX under an MPID registered to that member or member organization will not be assessed a Permit Fee.*

[[#] The Exchange will waive the Application and Initiation Fees from April 24, 2013 to May 13, 2013 ("Conversion Period") for current RSQTOs desiring to file an application to transfer existing permits to an RMM during the Conversion Period. The Exchange will only waive the Application and Initiation Fees for RSQTOs when transferring existing permits to an RMM, provided the current qualifier is not an RMM today.]

- **Permit Fees:** The Exchange has established the date of notification of termination of a permit as the date that permit fee billing will cease. Additionally, a permit holder will be billed only one monthly permit fee if the holder transfers from one member organization to another previously unrelated member organization as a result of a merger, partial sale or other business combination during a monthly permit fee period in order to avoid double billing in the month the merger or business combination occurred.

- The Initiation Fee is imposed on a new member upon the issuance of a permit, notwithstanding the fact that the new member may have been a former permit holder.

* * * * *

VII. OTHER MEMBER FEES

A. OPTION TRADING FLOOR FEES

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| [Trading/Administrative Booths | \$300 per month] |
| [Specialist Post Fee | \$3,000 per month] |
| Floor Facility Fees (applicable to <u>Clerks (excluding Inactive Nominees pursuant to Rule 925), Floor Brokers, ROTs[,] (including SQTs) and individual Specialists [and SQTs]</u>) | \$3[0]30 per month |

* * * * *