

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="26"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2013"/> - * <input type="text" value="93"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by **NASDAQ OMX PHLX LLC.**  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

**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 * <input type="text" value="Jeffrey"/>	Last Name * <input type="text" value="Davis"/>
Title * <input type="text" value="VP and Deputy General Counsel"/>	
E-mail * <input type="text" value="jeffrey.davis@nasdaqomx.com"/>	
Telephone * <input type="text" value="(301) 978-8484"/>	Fax <input type="text" value="(301) 978-8472"/>

**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 <input type="text" value="09/10/2013"/>	<input type="text" value="Executive Vice President and General Counsel"/>
By <input type="text" value="Edward S. Knight"/> (Name *)	<input type="text" value="Edward S Knight"/>

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 \***

Add Remove View

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 Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> NASDAQ OMX PHLX (“PHLX” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposal to make a minor modification to pricing incentive programs under PHLX’s schedule of fees and credits applicable to options trading on PHLX. Specifically, PHLX is proposing to exclude from volume-based pricing calculations any trading day on which PHLX is closed for trading due to early closing or a market-wide trading halt. This exclusion exists today for the trading of equities on PSX, the equities trading facility of PHLX.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached 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 PHLX pursuant to authority delegated by the Board of Directors of PHLX on July 17, 2013. PHLX staff will advise the Board of Directors of PHLX of any action taken pursuant to delegated authority. No other action by PHLX is necessary for the filing of the rule change. PHLX proposes to implement the proposed rule immediately.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Questions regarding this rule filing may be directed to Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ OMX, (301) 978-8484.

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

a. Purpose

PSX, the PHLX facility for trading equities, offers pricing for the trading of equities that is based on average daily volume of trading. The applicable fee schedule for equities trading on PSX contains language excluding from such volume calculations any day on which the market is not open the entire trading day. PHLX Pricing Schedule, Section VIII, entitled "Order Routing and Execution", footnote to subsection (a)(4) states that "For purposes of determining average daily volume hereunder, any day that the market is not open for the entire trading day will be excluded from such calculation." As a result, when trading ends early, as for trading days preceding certain federal holidays, or when there is a material market-wide disruption, PHLX excludes that day from the calculation of average daily volume.

The PHLX pricing schedule for options also contains pricing programs based on average daily volume. PHLX has determined to make this practice uniform for both equities and options trading on PHLX by moving the relevant language to the preamble of the PHLX Fee Schedule. In other words, for purposes of calculating any pricing based on average daily volumes for both equities and options trading any day that the market is not open for the entire trading day should be excluded from such calculation. As it currently does for equities, this formulation would exclude days on which the market closes early for holiday observance. It would also exclude days where PHLX declares a trading halt in all securities or honors a market-wide trading halt declared by another

market. This would apply to the market-wide trading halt of approximately three hours on August 22, 2013, which PHLX plans to exclude from Customer Rebate Tiers for the month of August.

This change will affect several fees described in PHLX Pricing Schedule, Section B, which contains pricing incentive programs that are designed to encourage member participation in PHLX options trading by increasing rebates or reducing fees for firms that trade on PHLX in increasingly higher volumes. For example, PHLX currently has four Customer Rebate Tiers by which it determines the rebate per share for Customer<sup>3</sup> orders in Multiply Listed Options (including SPY) that are electronically-delivered and executed. The Customer Rebate Tier thresholds are based upon a percentage of national volume of Customer Orders in certain options on a monthly basis. The rebates range from \$0.00 to \$0.15 per contract for Simple Orders<sup>4</sup> and from \$0.00 to \$0.17 per contract for Complex Orders as follows<sup>5</sup>

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<sup>3</sup> The term “Customer” applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Rule 1000(b)(14)).

<sup>4</sup> These “Category A Rebates” are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest, except in the case of Customer PIXL Orders that are greater than 999 contracts. All Customer PIXL Orders that are greater than 999 contracts will be paid a rebate regardless of the contra-party to the transaction.

<sup>5</sup> These “Category B Rebates” are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest, except in the case of Customer PIXL Complex Orders that are greater than 999 contracts. All Customer PIXL Complex Orders that are greater than 999 contracts will be paid a rebate regardless of the contra-party to the transaction.

Customer Rebate Tiers	Percentage Thresholds of National Customer Volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options (Monthly)	Category	
		A	B
Tier 1	0.00% - 0.75%	\$0.00	\$0.00
Tier 2	Above 0.75% - 1.60%	\$0.12	\$0.17
Tier 3	Above 1.60% - 2.60%	\$0.14	\$0.17
Tier 4	Above 2.60%	\$0.15	\$0.17

If the Exchange did not exclude aberrant low volume days when calculating ADV for the month, as a result of the decreased trading volume, the numerator for the calculation (e.g., trading volume) would be correspondingly lower, but the denominator for the threshold calculations (e.g., the number of trading days) would not be decreased. This would result in an effective cost increase.

Addition to the Customer Rebate Tiers, the proposed change will also impact additional volume based options pricing related to the Electronic Firm Fee Discount<sup>6</sup>, the QCC Rebate Schedule<sup>7</sup> and a discount related to PIXL Initiating Orders (Section II)<sup>8</sup>

<sup>6</sup> Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options are reduced to \$0.17 per contract for a given month provided that a Firm has volume greater than 500,000 electronically-delivered contracts in a month ("Electronic Firm Fee Discount"). The Electronic Firm Fee Discount applies per member organization when such members are trading in their own proprietary account.

The QCC Rebate Schedule comprises 5 tiers as follows: Tier 1 (0 to 299,999 contracts in a month) receives \$0.00 rebate per contract; Tier 2 (300,000 to 499,999 contracts in a month) receives \$0.07 rebate per contract; Tier 3 (500,000

The proposed change does not impact the calculation of fees and rebated set forth under Section VIII., Order Routing and Execution, subsection (a)(1); the exclusion currently applies to those fees and it will continue to apply unchanged. Nor does the proposal does not apply to other transaction fees or rebates that do not include an average daily volume component.

Absent the authority to exclude days that the market is not open for the entire trading day, members will experience an effective increase in fees or decrease in rebates. The artificially low volumes of trading on such days reduce the average daily activity of PHLX members both daily and monthly. Accordingly, excluding such days from the monthly calculation will diminish the likelihood of an effective increase in the cost of trading on PHLX, a result that is unintended and undesirable to PHLX and to PHLX members.

b. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</sup> in

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to 699,999 contracts in a month) receives \$0.08 rebate per contract; Tier 4 (700,000 to 999,999 contracts in a month) receives \$0.09 rebate per contract; and Tier 5 (Over 1,000,000 contracts in a month) receives \$0.11 rebate per contract. The maximum QCC Rebate to be paid in a given month will not exceed \$375,000.

<sup>8</sup> The PIXL Initiating Order (Section II) pricing is as follows: \$0.07 per contract or \$0.05 per contract if Customer Rebate Program Threshold Volume defined in Section 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 B will receive the PIXL Initiating Order discount as described above. The Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order will be reduced to \$0.00 if the Customer PIXL Order is greater than 999 contracts.

<sup>9</sup> 15 U.S.C. 78f.

particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which PHLX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

PHLX believes that the proposed change provides for equitable and reasonable allocation of fees because it simply extends to options trading a rule that currently applies in equities trading. Moreover, it is equitable and reasonable to eliminate from the calculation days on which the market is not open the entire trading day because it preserves PHLX's intent behind adopting volume-based pricing. The proposed change is non-discriminatory because it applies equally to all members and to all volume tiers on all asset classes traded on PHLX. PHLX will continue to monitor the operation of the proposed rule change and, in the event that PHLX identifies a disparate impact on one or another volume tier in the future, PHLX may determine to modify that volume tier via an additional proposed rule change.

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

PHLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. PHLX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, PHLX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been

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<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).



exempted from compliance with the statutory standards applicable to exchanges.

Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, PHLX believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

PHLX does not believe the proposed rule change will have an adverse impact on competition because there has been no adverse impact from imposing this rule in the context of equities trading. Moreover, in this instance, the proposed rule change should not impact competition because it merely preserves the full intent of PHLX's already-filed prices, which have not been deemed inconsistent with the Exchange Act or been found to impose an undue burden on competition. Moreover, the proposed rule change regarding days on which the market is not open the entire trading day will result in an effective reduction of fees or increase in rebates such that the total cost of trading on PHLX should decline. This is evidence that a proposed rule change is pro-competitive rather than anti-competitive.

5. 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.

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)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>11</sup>

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

of the Act and Rule 19b-4(f)(6) thereunder<sup>12</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

PHLX believes that the proposed rule change does not significantly affect the protection of investors or the public interest because there are very few instances where the rule will actually be invoked. Additionally, when the rule is invoked, the Exchange believes it has little or no impact on trading decisions or execution quality. This belief is based on the Exchange's experience administering a similar rule with respect to the trading of equities. Finally, the Exchange does not believe that the proposed rule change will impose a significant burden on competition. To the contrary, as explained in Section

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<sup>12</sup> 17 CFR 240.19b-4(f)(6).

4 of this Form, PHLX believes that the proposed rule change is pro-competitive and that it will result in lower total costs to end users, a positive outcome of competitive markets.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) so that PHLX can permit members and investors to benefit from the proposed rule change as quickly as possible. Specifically, as stated earlier, PHLX plans to exclude August 22, 2013, from the calculation of volume-based pricing for August of 2013. The decision to do so must be made quickly.

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

The proposed rule is substantially similar to NASDAQ Rule 7018(j), which applies to equities trading on The NASDAQ Stock Market LLC, and to BX Rule 7018(c) which applies to equities trading on NASDAQ OMX BX.<sup>13</sup>

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.

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<sup>13</sup> See also Securities Exchange Act Release No. 56068 (July 13, 2007), 72 F.R. 39866 (July 20, 2007) (SR-NASDAQ-2007-062, establishing Rule 7018(j)). Unlike the NASDAQ rule, PHLX is not proposing to exclude trading on the day of the Russell Reconstitution from the calculation of volume-based pricing. The Russell Reconstitution has little or no impact on equities or options trading on PHLX, and thus little or no impact on pricing.

11. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2013-93)

September \_\_, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make a Minor Modification to Pricing Incentive Programs

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 10, 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 make a minor modification to pricing incentive programs under PHLX’s schedule of fees and credits applicable to options trading on PHLX. Specifically, PHLX is proposing to exclude from volume-based pricing calculations any trading day on which PHLX is closed for trading due to early closing or a market-wide trading halt. This exclusion exists today for the trading of equities on PSX, the equities trading facility of PHLX.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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.

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

PSX, the PHLX facility for trading equities, offers pricing for the trading of equities that is based on average daily volume of trading. The applicable fee schedule for equities trading on PSX contains language excluding from such volume calculations any day on which the market is not open the entire trading day. PHLX Pricing Schedule, Section VIII, entitled "Order Routing and Execution", footnote to subsection (a)(4) states that "For purposes of determining average daily volume hereunder, any day that the market is not open for the entire trading day will be excluded from such calculation." As a result, when trading ends early, as for trading days preceding certain federal holidays, or when there is a material market-wide disruption, PHLX excludes that day from the calculation of average daily volume.

The PHLX pricing schedule for options also contains pricing programs based on average daily volume. PHLX has determined to make this practice uniform for both

equities and options trading on PHLX by moving the relevant language to the preamble of the PHLX Fee Schedule. In other words, for purposes of calculating any pricing based on average daily volumes for both equities and options trading any day that the market is not open for the entire trading day should be excluded from such calculation. As it currently does for equities, this formulation would exclude days on which the market closes early for holiday observance. It would also exclude days where PHLX declares a trading halt in all securities or honors a market-wide trading halt declared by another market. This would apply to the market-wide trading halt of approximately three hours on August 22, 2013, which PHLX plans to exclude from Customer Rebate Tiers for the month of August.

This change will affect several fees described in PHLX Pricing Schedule, Section B, which contains pricing incentive programs that are designed to encourage member participation in PHLX options trading by increasing rebates or reducing fees for firms that trade on PHLX in increasingly higher volumes. For example, PHLX currently has four Customer Rebate Tiers by which it determines the rebate per share for Customer<sup>3</sup> orders in Multiply Listed Options (including SPY) that are electronically-delivered and executed. The Customer Rebate Tier thresholds are based upon a percentage of national volume of Customer Orders in certain options on a monthly basis. The rebates range from \$0.00 to \$0.15 per contract for Simple Orders<sup>4</sup> and from \$0.00 to \$0.17 per contract for

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<sup>3</sup> The term “Customer” applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Rule 1000(b)(14)).

<sup>4</sup> These “Category A Rebates” are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols. Rebates are paid on

Complex Orders as follows<sup>5</sup>

Customer Rebate Tiers	Percentage Thresholds of National Customer Volume in Multiply- Listed Equity and ETF Options Classes, excluding SPY Options (Monthly)	Category	
		A	B
Tier 1	0.00% - 0.75%	\$0.00	\$0.00
Tier 2	Above 0.75% - 1.60%	\$0.12	\$0.17
Tier 3	Above 1.60% - 2.60%	\$0.14	\$0.17
Tier 4	Above 2.60%	\$0.15	\$0.17

If the Exchange did not exclude aberrant low volume days when calculating ADV for the month, as a result of the decreased trading volume, the numerator for the calculation (e.g., trading volume) would be correspondingly lower, but the denominator for the threshold calculations (e.g., the number of trading days) would not be decreased. This would result in an effective cost increase.

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Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest, except in the case of Customer PIXL Orders that are greater than 999 contracts. All Customer PIXL Orders that are greater than 999 contracts will be paid a rebate regardless of the contra-party to the transaction.

<sup>5</sup> These “Category B Rebates” are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest, except in the case of Customer PIXL Complex Orders that are greater than 999 contracts. All Customer PIXL Complex Orders that are greater than 999 contracts will be paid a rebate regardless of the contra-party to the transaction.



Addition to the Customer Rebate Tiers, the proposed change will also impact additional volume based options pricing related to the Electronic Firm Fee Discount<sup>6</sup>, the QCC Rebate Schedule<sup>7</sup> and a discount related to PIXL Initiating Orders (Section II)<sup>8</sup>. The proposed change does not impact the calculation of fees and rebated set forth under Section VIII., Order Routing and Execution, subsection (a)(1); the exclusion currently applies to those fees and it will continue to apply unchanged. Nor does the proposal does not apply to other transaction fees or rebates that do not include an average daily volume component.

Absent the authority to exclude days that the market is not open for the entire trading day, members will experience an effective increase in fees or decrease in rebates. The artificially low volumes of trading on such days reduce the average daily activity of

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<sup>6</sup> Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options are reduced to \$0.17 per contract for a given month provided that a Firm has volume greater than 500,000 electronically-delivered contracts in a month ("Electronic Firm Fee Discount"). The Electronic Firm Fee Discount applies per member organization when such members are trading in their own proprietary account.

<sup>7</sup> The QCC Rebate Schedule comprises 5 tiers as follows: Tier 1 (0 to 299,999 contracts in a month) receives \$0.00 rebate per contract; Tier 2 (300,000 to 499,999 contracts in a month) receives \$0.07 rebate per contract; Tier 3 (500,000 to 699,999 contracts in a month) receives \$0.08 rebate per contract; Tier 4 (700,000 to 999,999 contracts in a month) receives \$0.09 rebate per contract; and Tier 5 (Over 1,000,000 contracts in a month) receives \$0.11 rebate per contract. The maximum QCC Rebate to be paid in a given month will not exceed \$375,000.

<sup>8</sup> The PIXL Initiating Order (Section II) pricing is as follows: \$0.07 per contract or \$0.05 per contract if Customer Rebate Program Threshold Volume defined in Section 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 B will receive the PIXL Initiating Order discount as described above. The Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order will be reduced to \$0.00 if the Customer PIXL Order is greater than 999 contracts.

PHLX members both daily and monthly. Accordingly, excluding such days from the monthly calculation will diminish the likelihood of an effective increase in the cost of trading on PHLX, a result that is unintended and undesirable to PHLX and to PHLX members.

## 2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which PHLX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

PHLX believes that the proposed change provides for equitable and reasonable allocation of fees because it simply extends to options trading a rule that currently applies in equities trading. Moreover, it is equitable and reasonable to eliminate from the calculation days on which the market is not open the entire trading day because it preserves PHLX's full intent behind adopting volume-based pricing. The proposed change is non-discriminatory because it applies equally to all members and to all volume tiers on all asset classes traded on PHLX. PHLX will continue to monitor the operation of the proposed rule change and, in the event that PHLX identifies a disparate impact on one or another volume tier in the future, PHLX may determine to modify that volume tier via an additional proposed rule change.

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<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

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

PHLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. PHLX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, PHLX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, PHLX believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

PHLX does not believe the proposed rule change will have an adverse impact on competition because there has been no adverse impact from imposing this rule in the context of equities trading. Moreover, in this instance, the proposed rule change should not impact competition because it merely preserves the full intent of PHLX's already-filed prices, which have not been deemed inconsistent with the Exchange Act or been found to impose an undue burden on competition. Moreover, the proposed rule change regarding days on which the market is not open the entire trading day will result in an effective reduction of fees or increase in rebates such that the total cost of trading on PHLX should decline. This is evidence that a proposed rule change is pro-competitive rather than anti-competitive.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</sup>

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2013-93 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-2013-93. 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-2013-93 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.<sup>13</sup>

Kevin M O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined; deleted text is in brackets.*

**NASDAQ OMX PHLX LLC<sup>1</sup> PRICING SCHEDULE**

ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ OMX PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. AS OF JANUARY 3, 2011, THE EXCHANGE WILL CALCULATE FEES ON A TRADE DATE BASIS.

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<sup>1</sup>PHLX<sup>®</sup> is a registered trademark of The NASDAQ OMX Group, Inc.

**Table of Contents    No Change.**

**PREFACE**

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

The term "**Customer**" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).<sup>2</sup>

The term "**Specialist**" applies to transactions for the account of a Specialist<sup>3</sup> (as defined in Exchange Rule 1020(a)).

The term "**ROT, SQT and RSQT**" applies to transactions for the accounts of Registered Option Traders<sup>4</sup> ("ROTs"), Streaming Quote Traders ("SQTs"),<sup>5</sup> and Remote Streaming Quote Traders ("RSQTs").<sup>6</sup> For purposes of the Pricing Schedule, the term "**Market Maker**" will be utilized to describe fees and rebates applicable to ROTs, SQTs and RSQTs.

The term "**Firm**" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

The term "**Professional**" applies to transactions for the accounts of Professionals (as defined in Exchange Rule 1000(b)(14)).

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

The term "**Common Ownership**" shall mean members or member organizations under

75% common ownership or control.

For purposes of determining average daily volume or volume-based pricing hereunder, any day that the market is not open for the entire trading day will be excluded from such calculation.

**2** Rule 1000(b)(14) provides in relevant part: "The term "professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

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

**4** A Registered Option Trader 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. A ROT includes SQTs and RSQTs as well as on and off-floor ROTS.

**5** A Streaming Quote Trader 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.

**6** A Remote Streaming Quote Trader is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or "RSQTO," which may also be referred to as a Remote Market Making Organization ("RMO"), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a).

**Section A. No Change.**

**Section B. No Change.**

**Sections I – VII No Change.**

**Section VIII NASDAQ OMX PSX FEES**

**Access Services Fees No Change.**

### **Order Execution and Routing**

(a) The following charges and credits shall apply to the use of the order execution and routing services of the NASDAQ OMX PSX System by member organizations for all securities that it trades priced at \$1 or more per share:



(1) – (3) **No Change.**

(4) Fees for Routing of Orders in All Securities

Charge to member organization entering PSTG venue other than PSX System:	<p>\$0.0025 per share executed at NYSE</p> <p>or Credit of \$0.0014 per share executed at NASDAQ OMX BX</p> <p>\$0.0028 per share executed in other venues</p>
Charge to member organization entering PMOP order that executes in a venue other than the NASDAQ OMX PSX System:	<p>\$0.0027 per share executed at NYSE</p> <p>\$0.0031 per share executed at venues other than NYSE</p>
Charge to member organization entering PTFY order that executes in a venue other than the NASDAQ OMX PSX System:	<p>\$0.0024 per share executed at NYSE</p> <p>\$0.0005 per share executed at venues other than NYSE, NASDAQ or NASDAQ OMX BX</p> <p>\$0.0028 per share executed at NASDAQ</p> <p>Credit of \$0.0014 per share executed at NASDAQ OMX BX</p>
Charge to member organization entering PCRT order that executes in a venue other than the NASDAQ OMX PSX System:	<p>\$0.0028 per share executed at NASDAQ</p> <p>Credit of \$0.0014 per share executed at NASDAQ OMX BX</p>
Charge or credit to member organization entering XDRK order:	None

Charge or credit to member organization entering XCST order:	Credit of \$0.0014 per share executed at NASDAQ OMX BX  For shares executed at a venue other than NASDAQ OMX BX, none

[For purposes of determining average daily volume hereunder, any day that the market is not open for the entire trading day will be excluded from such calculation.]

\* "Regular market hours" means 9:30 a.m. through 4:00 p.m. Eastern Time, or such shorter period as may be designated by the Exchange on a day when PSX closes early.

(b) – (c)        **No Change.**

**Testing Facility – End of Section VIII        No Change.**

**Section IX - XII        No Change.**

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