

Required fields are shown with yellow backgrounds and asterisks.

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

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

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

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

Permit 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@nasdaq.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 12/18/2015
 By Edward S. Knight
 (Name *)

Executive Vice President and General Counsel

edward.knight@nasdaq.com

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

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

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 (“Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend the Exchange’s Pricing Schedule at Section VI, entitled “Membership Fees.” The Exchange also proposes to correct a reference to The NASDAQ OMX Group, Inc. within the Pricing Schedule.

The Exchange purposes to increase its permit fees for floor participants. The Exchange’s permit fees remain competitive with those of other options Exchanges. While the changes proposed herein are effective upon filing, the Exchange has designated the amendments to become operative on January 4, 2016.

A notice of the proposed rule change for publication in the Federal Register is at Exhibit 1. The text of the proposed rule change is at Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management of the Exchange approved the proposed rule change under authority delegated by the Exchange’s Board of Directors (“Board”) on July 1, 2015. The Exchange’s staff will advise the Board of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

a. Purpose

The Exchange proposes to increase permit fees so the Exchange can allocate its costs to various options market participants, specifically floor participants. The Exchange assesses Permit Fee by market participant. Today, the Exchange assesses the same monthly Permit Fees of \$2,300 to Floor Brokers,³ Specialists⁴ and Market Makers.⁵ All other market participants (Professionals,⁶ Firms⁷ and Broker-Dealers,⁸ collectively “Other Market Participants”) are assessed a Permit Fee of \$4,000 in a given month, unless the members or member organizations or those member organizations under

³ A “Floor Broker” is defined in Phlx Rule 1060 as “[a]n individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and executing options orders received from members and member organizations.”

⁴ A “Specialist” is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁵ A “Market Maker” includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (see Rule 1014(b)(ii)(B)).

⁶ The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

⁷ The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation.

⁸ The term “Broker-Dealer” applies to any transaction that is not subject to any of the other transaction fees applicable within a particular category.

Common Ownership,⁹ execute at least 100 options in a Phlx house account that is assigned to one of the member organizations in a given month, in which case the Permit Fee is \$2,300 for that month. The Exchange believes that 100 options in a given month continues to be a reasonable level given the volume of options transacted on Phlx to receive the lower Permit Fee. Also, today, option members and member organizations pay an additional Permit Fee for each sponsored options participant, which fee is the Permit Fee that is assessed to the member or member organization sponsoring the options participant,¹⁰ of either \$2,300 or \$4,000.

The Exchange is not amending the Permit Fees for Other Market Participants or the criteria of the lower Permit Fee of \$2,300 per month for members and member organizations that execute a certain amount of volume on the Exchange.

The Exchange also proposes to correct a reference to The NASDAQ OMX Group, Inc. within the Pricing Schedule. The amendments are detailed below.

Permit Fee Amendments

- The Exchange proposes to raise revenue for the Exchange by increasing the Floor Broker Permit Fee from \$2,300 to \$3,000 per month.

⁹ The term “Common Ownership” shall mean members or member organizations under 75% common ownership or control. See Preface to Exchange’s Pricing Schedule.

¹⁰ 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.

- The Exchange proposes to increase the Floor Specialist and Floor Market Maker Permit Fee from \$2,300 to \$4,500 per month. Specialists and Market Makers conducting an electronic business will continue to pay \$4,000 or \$2,300 depending on their volume for the month.

The Exchange believes that these Permit Fees remain competitive with fees at other options exchanges.¹¹

Name Change

- Correct a reference to The NASDAQ OMX Group, Inc. within the Pricing Schedule to newly named Nasdaq, Inc.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act¹³ 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 the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because

¹¹ See note 21 below.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

national market system regulation “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁴ Likewise, in NetCoalition v. NYSE Arca, Inc.¹⁵ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁶ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁷

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁸ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Amendments to Permit Fees

The Exchange’s proposal to increase Floor Broker Permit Fees from \$2,300 to

¹⁴ Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

¹⁵ NetCoalition v. NYSE Arca, Inc. 615 F.3d 525 (D.C. Cir. 2010).

¹⁶ See NetCoalition, at 534.

¹⁷ Id. at 537.

¹⁸ Id. at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

\$3,000 and Floor Specialist and Floor Market Maker Permit Fees from \$2,300 to \$4,500 is reasonable because the Exchange incurs costs in operating and maintaining a trading floor that are unique to a floor operation. The Exchange believes it is reasonable to allocate the Exchange's expenses, among the market participants on the trading floor, based on the unique resources consumed by each category of market participant and additional services. The proposed increase also covers the rising facility costs and staffing expenses required to service the floor community, process trading tickets and service the trading floor. The Exchange has not increased these fees in two years. Floor Specialists and Floor Market Makers benefit from the access they have to orders which are made available in open outcry on the trading floor. For these reasons the Exchange believes that it is reasonable to increase the costs of permits for floor participants and specifically, assess Floor Specialists and Floor Market Makers the higher floor permits.

The Exchange notes that assessing different Permit Fee rates to different types of market participants is not novel.¹⁹ Both CBOE and NYSE Arca have different fixed and transaction fees for floor as compared to electronically transmitted orders. The differentiation in these fees recognizes the different business models associated with electronic as compared to floor trading. For example, Floor Brokers are registered with the Exchange for the purpose, while on the options floor, of accepting and executing options orders received from members and member organizations.²⁰ This type of

¹⁹ The Chicago Board Options Exchange, Incorporated ("CBOE"), the International Securities Exchange, LLC ("ISE") and Miami International Securities Exchange LLC ("MIAX") assess different Trading Permit Fees to different market participants. See CBOE's Fees Schedule, ISE's Fee Schedule and MIAX's Fee Schedule.

²⁰ See Exchange Rule 1060.

business model is distinct from that of an electronic trader. Additionally, Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. Specialists and Market Makers are offered the optionality on the Exchange of either transacting business electronically or on the trading floor. Also, the proposed Permit Fees are competitive with fees at other options exchanges. Both CBOE and NYSE Arca assess different fees to Floor Brokers and Market Makers.²¹

The Exchange's proposal to increase Floor Broker Permit Fees from \$2,300 to \$3,000 and Floor Specialist and Floor Market Maker from \$2,300 to \$4,500 is equitable and not unfairly discriminatory because the Exchange seeks to allocate the costs in a fair and equitable manner by basing the fees on the consumption of resources. Electronic market participants will continue to be uniformly assessed a \$4,000 a month Permit Fee and will continue to be offered an opportunity to decrease that fee by directing at least 100 option contracts in a given month.²² This liquidity benefits all market participants and in turn brings revenue to the Exchange through transaction fees assessed to these orders. The Exchange believes that assessing different rates for floor market participants

²¹ See CBOE's Fees Schedule. A Market-Maker Trading Permit is \$5,500 per month, except for ETH only permits which are \$1,000 per month. A Floor Broker Trading Permit is \$9,000 per month. An Electronic Access Permit is \$1,600 per month, except for ETH only which is \$500 per month. There are also other permits for SPX and VIX trading and some waivers apply to ETH for the first permit. See also NYSE Arca, Inc.'s ("NYSE Arca") Options Trading Participation Rights in NYSE Arca Options Fees and Charges. Floor Brokers on NYSE Arca are assessed a \$1,000 per month options trading participant rights ("OTP") fee for the first OTP and \$250 for each additional OTP. NYSE Arca Market Makers are assessed \$6,000 for the first OTP and then the OTP fee declines on a scale down to \$1,000 for additional OTPs.

²² The Exchange believes that 100 options in a given month continues to be a reasonable level given the volume of options transacted on Phlx to receive the lower Permit Fee.

as compared to electronic market participants for Permit Fees is equitable and not unfairly discriminatory because of the increasing costs incurred by the Exchange in operating and maintaining the trading floor, which costs have increased over the years. The Exchange has not increased these fees in two years. The proposed Permit Fee structure recognizes the resources consumed by market participants on the trading floor. The Exchange is one of only four exchanges that offer a trading floor environment in addition to the electronic environment. The Exchange is required to staff the trading floor with regulatory personnel and provide a physical infrastructure in addition to other costs which are also incurred to operate an electronic environment.

The Exchange believes that it is equitable and not unfairly discriminatory to assess Specialists and Market Makers that operate an electronic business a lower rate than Specialists and Market Makers that operate a floor business. Specialists and Market Makers have the ability to operate an electronic business on the Exchange, as compared to floor brokers, who have a business model that is naturally tied to the physical trading space. Specialists and Market Makers desiring to interact with the order flow generated by these floor brokers are offered the opportunity to transact business on the trading floor in addition to the electronic market. This opportunity comes at a cost for the Exchange. The Exchange believes that the increased fee to Floor Specialists and Floor Market Makers is equitable and not unfairly discriminatory because the Exchange is allocating the additional floor cost to the participants that benefit from such a dual structure. In addition, the floor environment offers floor market participants the choice of transacting

certain complex transactions, i.e. a Complex Order²³ with multiple legs, on the trading floor in open outcry or the electronic market. Certain FLEX transactions,²⁴ transfers²⁵ or accommodation transactions²⁶ also lend themselves to the trading floor environment and the Exchange offers all market participants the opportunity to avail themselves of either access method to conduct their business.

Name Change

The Exchange's proposal to correct the reference to The NASDAQ OMX Group, Inc. within the reference to the trademark PHLX® to recently renamed Nasdaq, Inc.²⁷ is reasonable, equitable and not unfairly discriminatory because the amendment simply updates the name.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly

²³ A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

²⁴ See Phlx Rule 1079.

²⁵ See Phlx Rule 1058.

²⁶ See Phlx Rule 1059.

²⁷ See Securities Exchange Act Release No. 75421 (July 16, 2015), 80 FR 42136 (July 10, 2015) (SR-BSECC-2015-001; SR-BX-2015-030; SR-NASDAQ-2015-058; SR-Phlx-2015-46; SR-SCCP-2015-01).

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, the Exchange 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, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The Exchange's proposal to increase Floor Broker Permit Fees from \$2,300 to \$3,000 and Floor Specialist and Floor Market Maker from \$2,300 to \$4,500 does not impose an undue burden on intra-market competition because the Exchange proposes to allocate the costs to floor participants because they consume a greater amount of Exchange resources. The Exchange is required to staff the trading floor with regulatory personnel and provide a physical infrastructure in addition to other costs which are also incurred to operate an electronic environment. The Exchange has incurred increasing costs in operating and maintaining the trading floor, which costs have increased over the years. Specialists and Market Makers have the ability to operate an electronic business on the Exchange, as compared to floor brokers, who have a business model that is naturally tied to the physical trading space.

Specialists and Market Makers desiring to interact with the order flow generated by these floor brokers are offered the opportunity to transact business on the trading floor in addition to the electronic market. This opportunity comes at a cost for the Exchange.

The Exchange believes that the increased fee to Floor Specialists and Floor Market Makers does not impose an undue burden on intra-market competition because the Exchange is allocating the additional floor cost to the participants that benefit from such a dual structure.

The proposed Permit Fees are competitive with fees at other options exchanges.²⁸ If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Name Change

The Exchange's proposal to correct the reference to The NASDAQ OMX Group, Inc. within the reference to the trademark PHLX® to recently renamed Nasdaq, Inc. does not impose any undue burden on intra-market competition because the amendment simply updates the name.

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.

²⁸

See note 21 above.

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,²⁹ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization 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.

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.

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. Text of the proposed rule change.

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2015-109)

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend Permit 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 December 18, 2015, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Exchange’s Pricing Schedule at Section VI, entitled “Membership Fees.” The Exchange also proposes to correct a reference to The NASDAQ OMX Group, Inc. within the Pricing Schedule.

The Exchange purposes to increase its permit fees for floor participants. The Exchange’s permit fees remain competitive with those of other options Exchanges. While the changes proposed herein are effective upon filing, the Exchange has designated the amendments to become operative on January 4, 2016.

¹ 15 U.S.C. 78s(b)(1).

² 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

The Exchange proposes to increase permit fees so the Exchange can allocate its costs to various options market participants, specifically floor participants. The Exchange assesses Permit Fee by market participant. Today, the Exchange assesses the same monthly Permit Fees of \$2,300 to Floor Brokers,³ Specialists⁴ and Market Makers.⁵

³ A "Floor Broker" is defined in Phlx Rule 1060 as "[a]n individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and executing options orders received from members and member organizations."

⁴ A "Specialist" is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁵ A "Market Maker" includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (see Rule 1014(b)(ii)(B)).

All other market participants (Professionals,⁶ Firms⁷ and Broker-Dealers,⁸ collectively “Other Market Participants”) are assessed a Permit Fee of \$4,000 in a given month, unless the members or member organizations or those member organizations under Common Ownership,⁹ execute at least 100 options in a Phlx house account that is assigned to one of the member organizations in a given month, in which case the Permit Fee is \$2,300 for that month. The Exchange believes that 100 options in a given month continues to be a reasonable level given the volume of options transacted on Phlx to receive the lower Permit Fee. Also, today, option members and member organizations pay an additional Permit Fee for each sponsored options participant, which fee is the Permit Fee that is assessed to the member or member organization sponsoring the options participant,¹⁰ of either \$2,300 or \$4,000.

⁶ The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

⁷ The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation.

⁸ The term “Broker-Dealer” applies to any transaction that is not subject to any of the other transaction fees applicable within a particular category.

⁹ The term “Common Ownership” shall mean members or member organizations under 75% common ownership or control. See Preface to Exchange’s Pricing Schedule.

¹⁰ 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.

The Exchange is not amending the Permit Fees for Other Market Participants or the criteria of the lower Permit Fee of \$2,300 per month for members and member organizations that execute a certain amount of volume on the Exchange.

The Exchange also proposes to correct a reference to The NASDAQ OMX Group, Inc. within the Pricing Schedule. The amendments are detailed below.

Permit Fee Amendments

- The Exchange proposes to raise revenue for the Exchange by increasing the Floor Broker Permit Fee from \$2,300 to \$3,000 per month.
- The Exchange proposes to increase the Floor Specialist and Floor Market Maker Permit Fee from \$2,300 to \$4,500 per month. Specialists and Market Makers conducting an electronic business will continue to pay \$4,000 or \$2,300 depending on their volume for the month.

The Exchange believes that these Permit Fees remain competitive with fees at other options exchanges.¹¹

Name Change

- Correct a reference to The NASDAQ OMX Group, Inc. within the Pricing Schedule to newly named Nasdaq, Inc.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act¹³

¹¹ See note 21 below.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

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 the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁴ Likewise, in NetCoalition v. NYSE Arca, Inc.¹⁵ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁶ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁷

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of

¹⁴ Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

¹⁵ NetCoalition v. NYSE Arca, Inc. 615 F.3d 525 (D.C. Cir. 2010).

¹⁶ See NetCoalition, at 534.

¹⁷ Id. at 537.

where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”¹⁸ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Amendments to Permit Fees

The Exchange’s proposal to increase Floor Broker Permit Fees from \$2,300 to \$3,000 and Floor Specialist and Floor Market Maker Permit Fees from \$2,300 to \$4,500 is reasonable because the Exchange incurs costs in operating and maintaining a trading floor that are unique to a floor operation. The Exchange believes it is reasonable to allocate the Exchange’s expenses, among the market participants on the trading floor, based on the unique resources consumed by each category of market participant and additional services. The proposed increase also covers the rising facility costs and staffing expenses required to service the floor community, process trading tickets and service the trading floor. The Exchange has not increased these fees in two years. Floor Specialists and Floor Market Makers benefit from the access they have to orders which are made available in open outcry on the trading floor. For these reasons the Exchange believes that it is reasonable to increase the costs of permits for floor participants and specifically, assess Floor Specialists and Floor Market Makers the higher floor permits.

The Exchange notes that assessing different Permit Fee rates to different types of market participants is not novel.¹⁹ Both CBOE and NYSE Arca have different fixed and

¹⁸ Id. at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

¹⁹ The Chicago Board Options Exchange, Incorporated (“CBOE”), the International Securities Exchange, LLC (“ISE”) and Miami International Securities Exchange

transaction fees for floor as compared to electronically transmitted orders. The differentiation in these fees recognizes the different business models associated with electronic as compared to floor trading. For example, Floor Brokers are registered with the Exchange for the purpose, while on the options floor, of accepting and executing options orders received from members and member organizations.²⁰ This type of business model is distinct from that of an electronic trader. Additionally, Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. Specialists and Market Makers are offered the optionality on the Exchange of either transacting business electronically or on the trading floor. Also, the proposed Permit Fees are competitive with fees at other options exchanges. Both CBOE and NYSE Arca assess different fees to Floor Brokers and Market Makers.²¹

The Exchange's proposal to increase Floor Broker Permit Fees from \$2,300 to \$3,000 and Floor Specialist and Floor Market Maker from \$2,300 to \$4,500 is equitable

LLC ("MIAX") assess different Trading Permit Fees to different market participants. See CBOE's Fees Schedule, ISE's Fee Schedule and MIAX's Fee Schedule.

²⁰ See Exchange Rule 1060.

²¹ See CBOE's Fees Schedule. A Market-Maker Trading Permit is \$5,500 per month, except for ETH only permits which are \$1,000 per month. A Floor Broker Trading Permit is \$9,000 per month. An Electronic Access Permit is \$1,600 per month, except for ETH only which is \$500 per month. There are also other permits for SPX and VIX trading and some waivers apply to ETH for the first permit. See also NYSE Arca, Inc.'s ("NYSE Arca") Options Trading Participation Rights in NYSE Arca Options Fees and Charges. Floor Brokers on NYSE Arca are assessed a \$1,000 per month options trading participant rights ("OTP") fee for the first OTP and \$250 for each additional OTP. NYSE Arca Market Makers are assessed \$6,000 for the first OTP and then the OTP fee declines on a scale down to \$1,000 for additional OTPs.

and not unfairly discriminatory because the Exchange seeks to allocate the costs in a fair and equitable manner by basing the fees on the consumption of resources. Electronic market participants will continue to be uniformly assessed a \$4,000 a month Permit Fee and will continue to be offered an opportunity to decrease that fee by directing at least 100 option contracts in a given month.²² This liquidity benefits all market participants and in turn brings revenue to the Exchange through transaction fees assessed to these orders. The Exchange believes that assessing different rates for floor market participants as compared to electronic market participants for Permit Fees is equitable and not unfairly discriminatory because of the increasing costs incurred by the Exchange in operating and maintaining the trading floor, which costs have increased over the years. The Exchange has not increased these fees in two years. The proposed Permit Fee structure recognizes the resources consumed by market participants on the trading floor. The Exchange is one of only four exchanges that offer a trading floor environment in addition to the electronic environment. The Exchange is required to staff the trading floor with regulatory personnel and provide a physical infrastructure in addition to other costs which are also incurred to operate an electronic environment.

The Exchange believes that it is equitable and not unfairly discriminatory to assess Specialists and Market Makers that operate an electronic business a lower rate than Specialists and Market Makers that operate a floor business. Specialists and Market Makers have the ability to operate an electronic business on the Exchange, as compared to floor brokers, who have a business model that is naturally tied to the physical trading

²² The Exchange believes that 100 options in a given month continues to be a reasonable level given the volume of options transacted on Phlx to receive the lower Permit Fee.

space. Specialists and Market Makers desiring to interact with the order flow generated by these floor brokers are offered the opportunity to transact business on the trading floor in addition to the electronic market. This opportunity comes at a cost for the Exchange. The Exchange believes that the increased fee to Floor Specialists and Floor Market Makers is equitable and not unfairly discriminatory because the Exchange is allocating the additional floor cost to the participants that benefit from such a dual structure. In addition, the floor environment offers floor market participants the choice of transacting certain complex transactions, i.e. a Complex Order²³ with multiple legs, on the trading floor in open outcry or the electronic market. Certain FLEX transactions,²⁴ transfers²⁵ or accommodation transactions²⁶ also lend themselves to the trading floor environment and the Exchange offers all market participants the opportunity to avail themselves of either access method to conduct their business.

Name Change

The Exchange's proposal to correct the reference to The NASDAQ OMX Group,

²³ A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

²⁴ See Phlx Rule 1079.

²⁵ See Phlx Rule 1058.

²⁶ See Phlx Rule 1059.

Inc. within the reference to the trademark PHLX® to recently renamed Nasdaq, Inc.²⁷ is reasonable, equitable and not unfairly discriminatory because the amendment simply updates the name.

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. In terms of inter-market competition, the Exchange 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, the Exchange 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, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The Exchange's proposal to increase Floor Broker Permit Fees from \$2,300 to \$3,000 and Floor Specialist and Floor Market Maker from \$2,300 to \$4,500 does not impose an undue burden on intra-market competition because the Exchange proposes to allocate the costs to floor participants because they consume a greater amount of Exchange resources. The Exchange is required to staff the trading floor with regulatory

²⁷ See Securities Exchange Act Release No. 75421 (July 16, 2015), 80 FR 42136 (July 10, 2015) (SR-BSECC-2015-001; SR-BX-2015-030; SR-NASDAQ-2015-058; SR-Phlx-2015-46; SR-SCCP-2015-01).

personnel and provide a physical infrastructure in addition to other costs which are also incurred to operate an electronic environment. The Exchange has incurred increasing costs in operating and maintaining the trading floor, which costs have increased over the years. Specialists and Market Makers have the ability to operate an electronic business on the Exchange, as compared to floor brokers, who have a business model that is naturally tied to the physical trading space.

Specialists and Market Makers desiring to interact with the order flow generated by these floor brokers are offered the opportunity to transact business on the trading floor in addition to the electronic market. This opportunity comes at a cost for the Exchange. The Exchange believes that the increased fee to Floor Specialists and Floor Market Makers does not impose an undue burden on intra-market competition because the Exchange is allocating the additional floor cost to the participants that benefit from such a dual structure.

The proposed Permit Fees are competitive with fees at other options exchanges.²⁸ If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Name Change

The Exchange's proposal to correct the reference to The NASDAQ OMX Group, Inc. within the reference to the trademark PHLX® to recently renamed Nasdaq, Inc. does

²⁸

See note 21 above.

not impose any undue burden on intra-market competition because the amendment simply updates the name.

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.²⁹

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.

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

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2015-109 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2015-109. 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-2015-109 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.³⁰

Robert W. Errett
Deputy Secretary

³⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

NASDAQ OMX PHLX Rules

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Rules of the Exchange

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NASDAQ OMX PHLX LLC¹ 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.

¹PHLX[®] is a registered trademark of [The NASDAQ OMX Group]Nasdaq, Inc.

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

Permit Fees for Phlx Members (per month)

Phlx Permit Fees¹⁶

Floor Broker Permit Fee	\$[2,300] <u>3,000</u>
<u>Floor</u> Specialist and <u>Floor</u> Market Maker	\$[2,300] <u>4,500</u>

Permit Fees for all other member and member organizations, including Specialists and Market Makers submitting electronic orders: \$4,000 in a given month, unless the member or member organization or member organizations under Common Ownership, executes at least 100 options in a Phlx house account that is assigned to one of the member organizations in a given month, in which case the Permit Fee will be \$2,300 for that month.

PSX Only Permit Fees:

Members and member organizations: \$4,000 in a given month, unless the member or member organization averages at least 1,000 shares executed per day in a given month, in which case the Permit Fee will be \$0.00.

¹⁶A member or member organization will pay an additional Permit Fee for each

sponsored options participant, which fee will be the Permit Fee that is assessed to the member or member organization sponsoring the options participant.

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 Fee¹⁴ \$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 an 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 Initiation Fee and Account Fee will apply.*

