

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 *).

A proposed rule change to modify Chapter VII Section B of the fee schedule separately to identify Purge Ports.

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="Vice President and Deputy General Counsel"/>	
E-mail * <input type="text" value="jeffrey.davis@nasdaq.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="12/31/2015"/>	Executive Vice President and General Counsel
By <input type="text" value="Edward S. Knight"/>	<input type="text"/>
(Name *)	<input type="text" value="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 *

Add Remove View

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

Add Remove View

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) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² NASDAQ OMX PHLX LLC (“Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to modify Chapter VII Section B of the Exchange’s fee schedule separately to identify Purge Ports and to set the fees applicable to Purge Ports. The Exchange also is making technical, non-substantive modifications to the certain existing provisions in Chapter VII Section B.

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 attached hereto as Exhibit 1 and a copy of the applicable portion of the rule text is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of Phlx pursuant to authority delegated by the Board of Directors of the Exchange (“Board”) on July 1, 2015. Phlx staff will advise the Board of any action taken pursuant to delegated authority. No other action by Phlx 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 Jurij Trypupenko, Associate General Counsel, Nasdaq, Inc., at (301) 978-8132.

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

a. Purpose

SQF is an interface that enables specialists, Streaming Quote Traders (“SQTs”)³ and Remote Streaming Quote Traders (“RSQTs”)⁴ to connect and send quotes into Phlx XL.⁵ SQF Ports allows member organizations to access, information such as execution reports, execution report messages, auction notifications, and administrative data through a single feed. Other data that is available includes: (1) Options Auction Notifications (*e.g.*, opening imbalance, market exhaust, PIXL or other information) ;(2) receive inbound quotes at any time within that month Options Symbol Directory Messages; (3) System Event Messages (*e.g.*, start of messages, start of system hours, start of quoting, start of opening); (4) Complex Order Strategy Auction Notifications (COLA); (5) Complex Order Strategy messages; (6) Option Trading Action Messages (*e.g.*, trading halts, resumption of trading); and (7) Complex Strategy Trading Action Message (*e.g.*, trading halts, resumption of trading).

³ An SQT is defined in Exchange Rule 1014(b)(ii)(A) as a Registered Options Trader (“ROT”) who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

⁴ An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization 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. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

⁵ See Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR-Phlx-2010-124).

Purge Ports are SQF Ports that are configured and utilized for the sole purpose of purging option interest from the Exchange's system. A Purge Port is configured as a "Purge-only" port to only allow entry of underlying-level purges for a specified range of options. A purge of options quoted on the SQF interface is reported via a "Purge Notification" message that identifies the members submitting the purge and the underlying symbols.⁶ Purge Ports exist today, however the Exchange does not separately identify Purge Ports or assess a fee for them.

The Exchange proposes to amend Chapter VII Section B of the Exchange Fee Schedule to distinguish Purge Ports from SQF Ports and to add a new monthly Purge Port fee. The Exchange is also making technical, non-substantive changes to Chapter VII, Section B to enhance clarity and readability. These changes are described in detail below.

Change 1 - Purge Port Fees

The Exchange proposes new subsection 4 of Chapter VII Section B to institute a Purge Port Fee. The proposed fee will be \$500 per port per month for each of the first 5 Purge Ports, and will be \$100 per port per month for each port thereafter. The structure of the Purge Port Fee is similar to that of the current CTI⁷ Port Fee, except that the Purge

⁶ For additional information regarding Purge Ports, as well as SQF generally, see <http://www.nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/sqfnom2.0.pdf>. This document applies to the Exchange, to the Nasdaq Options Market, and to the BX Options Market, all of which are options exchanges of Nasdaq, Inc.

⁷ CTI offers real-time clearing trade updates. A real-time clearing trade update is a message that is sent to a member after an execution has occurred and contains trade details. The message containing the trade details is also simultaneously sent to The Options Clearing Corporation.

Port Fee is lower for the first five ports.⁸ Following is an example of the proposed new Purge Port Fee. A Participant that has three Purge Ports would, on a monthly basis, be fee liable for \$1,500 (\$500 x 3). And a Participant that has seven Purge Ports would, on a monthly basis, be fee liable for \$2,700 (\$500 x 5 and \$100 x 2).

Change 2 – Technical Modifications

The Exchange is also taking the opportunity to enhance the clarity and readability of Chapter VII, Section B of the Fee Schedule. First, the Exchange is numbering each fee in a separate subsection. Second, the Exchange is moving text from footnotes to the body of each provision. Third, the Exchange is adding missing words to clarify the current application of certain monthly port fees. None of these changes modifies the application of any existing fee.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,¹⁰ 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.

⁸ Whereas the proposed Purge Port Fee is \$500 per port per month for each of the first five ports and \$100 per port for each port thereafter, the CTI Port Fee is \$650 per port per month for the first five ports and \$100 per port thereafter. NOM and BX Options CTI Port Fees are \$650 and \$200, respectively. See NOM Chapter XV, Section 3(b) and BX Chapter XV, Section 3(b).

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

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.”¹¹ Likewise, in *NetCoalition v. NYSE Arca, Inc.*, 615 F.3d 525 (D.C. Cir. 2010), 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.¹² 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.”¹³

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’”¹⁴ Although the Court

¹¹ Exchange Act Release No. 34-51808 (June 9, 2005) (“Regulation NMS Adopting Release”).

¹² See *NetCoalition*, 615 F.3d at 534.

¹³ Id. at 537.

¹⁴ *NetCoalition I*, 615 F.3d at 539 (quoting *ArcaBook Order*, 73 FR at 74782-74783).

and the SEC were discussing the cash equities markets, the Exchange believes that, as discussed above, these views apply with equal force to the options markets.

The Exchange believes that its proposal should continue to provide opportunities for more efficient participation in orders and executions on the Exchange and at the same time facilitate the ability of the Exchange to recoup some costs, maintain, and improve Purge Ports.

Change 1 - Purge Port Fees

The Exchange believes that its proposal to institute a Purge Port Fee of \$500 per port per month for each of the first 5 Purge Ports and \$100 per port for each port thereafter is reasonable because it would allow the Exchange to recoup technology costs. The proposed Purge Port Fee reflects the desire of the Exchange to recoup the costs of maintaining ports. The Purge Port Fee is reasonable because it enables the Exchange to offset, in part, its costs associated with making such ports available, including costs based on software and hardware enhancements and resources dedicated to development, quality assurance, and support. The structure of the Exchange's Purge Port Fee is similar to that of the current CTI Port Fee, except that the Purge Port Fee is lower for the first five ports.¹⁵ In addition, the Purge Port Fee is in line with costs for ports at other options exchanges.¹⁶ The Purge Port Fee is also reasonable because it reflects a structure that is

¹⁵ Whereas the proposed Purge Port Fee is \$500 per port per month for each of the first five ports and \$100 per port for each port thereafter, the Phlx CTI Port Fee is \$650 per port per month for the first five ports and \$100 per port thereafter. NOM and BX Options CTI Port Fees are simply \$650 and \$200, respectively. See NOM Chapter XV, Section 3(b) and BX Chapter XV, Section 3(b).

¹⁶ See NOM Pricing Schedule (port fees \$650 or \$750 per port). See also ISE Gemini, LLC ("ISE Gemini") Fee Schedule (port fees \$750 to \$15,000 depending on connectivity levels); and C2 Options Exchange, Incorporated ("C2") (generally assesses port fees \$500 to \$1,000 depending on connectivity levels).

not novel in the options markets but rather, as a graduated fee, is similar to that of other options exchanges and competitive with what is offered by other exchanges.

Moreover, SQF and Purge Ports allow Specialists and Market Makers to access information and rely on data available through such ports to provide necessary information to perform market making activities in a swift and meaningful way. The Exchange believes that the progressive nature of the proposed new Purge Port Fees for Specialists and Market Makers is reasonable. Specialists and Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants because Specialists and Market Makers add value through continuous quoting and the commitment of capital. Specialists and Market Makers provide a critical liquidity function across thousands of individual option puts and option calls, a function no other market participants are obligated to perform.

The Exchange believes that establishing the proposed Purge Port Fee is equitable and not unfairly discriminatory in that it will apply uniformly to all similarly situated Participants. All Specialists and Market Makers that use Purge Ports will be assessed the Purge Port Fee in the same way.

Change 2 – Technical Modifications.

The Exchange believes that the proposed technical modifications are fair and reasonable in that they do not impact the application of existing fees but simply enhance clarity and readability. Nor are the proposed technical modifications discriminatory in any respect.

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. Specifically, the Exchange does not believe that its proposal to make changes to Chapter VII, Section B to add new Purge Port Fees will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because it enables the Exchange to continue offering Purge Ports to the benefit of market participants.

The Exchange does not believe that the proposed rule change will impose any undue 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. Moreover, in terms

of intra-market competition, the Exchange notes that the proposed assessment of a Purge Port Fee will be applied uniformly to all Participants that are Specialists and Market Makers that use such ports but should have no undue burden on any particular group of users. The proposal is designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup for certain of its connectivity costs, while continuing to offer competitive rates to Participants.

Furthermore, in this instance the proposed Purge Port Fee does not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share and revenue as participants choose to abandon ports. 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. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁷ 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

Not applicable

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2015-120)

December __, 2015

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Proposed Rule Change To Modify Chapter VII Section B Of The Exchange's Fee Schedule

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 31, 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 proposed rule change to modify Chapter VII Section B of the Exchange's fee schedule separately to identify Purge Ports and to set the fees applicable to Purge Ports. The Exchange also is making technical, non-substantive modifications to the certain existing provisions in Chapter VII Section B.

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

SQF is an interface that enables specialists, Streaming Quote Traders ("SQTs")³ and Remote Streaming Quote Traders ("RSQTs")⁴ to connect and send quotes into Phlx XL.⁵ SQF Ports allows member organizations to access, information such as execution reports, execution report messages, auction notifications, and administrative data through a single feed. Other data that is available includes: (1) Options Auction Notifications

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(*e.g.*, opening imbalance, market exhaust, PIXL or other information) ;(2) receive inbound quotes at any time within that month Options Symbol Directory Messages; (3) System Event Messages (*e.g.*, start of messages, start of system hours, start of quoting, start of opening); (4) Complex Order Strategy Auction Notifications (COLA); (5) Complex Order Strategy messages; (6) Option Trading Action Messages (*e.g.*, trading halts, resumption of trading); and (7) Complex Strategy Trading Action Message (*e.g.*, trading halts, resumption of trading).

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⁶ For additional information regarding Purge Ports, as well as SQF generally, see <http://www.nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/sqfnom2.0.pdf>. This document applies to the Exchange, to the Nasdaq Options Market, and to the BX Options Market, all of which are options exchanges of Nasdaq, Inc.

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Change 2 – Technical Modifications

The Exchange is also taking the opportunity to enhance the clarity and readability of Chapter VII, Section B of the Fee Schedule. First, the Exchange is numbering each fee in a separate subsection. Second, the Exchange is moving text from footnotes to the body of each provision. Third, the Exchange is adding missing words to clarify the current application of certain monthly port fees. None of these changes modifies the application of any existing fee.

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2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,¹⁰ 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.”¹¹ Likewise, in *NetCoalition v. NYSE Arca, Inc.*, 615 F.3d 525 (D.C. Cir. 2010), 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.¹² As the court emphasized, the Commission “intended

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ Exchange Act Release No. 34-51808 (June 9, 2005) (“Regulation NMS Adopting Release”).

¹² See *NetCoalition*, 615 F.3d at 534.

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.”¹³

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¹³ Id. at 537.

¹⁴ *NetCoalition I*, 615 F.3d at 539 (quoting *ArcaBook Order*, 73 FR at 74782-74783).

on software and hardware enhancements and resources dedicated to development, quality assurance, and support. The structure of the Exchange's Purge Port Fee is similar to that of the current CTI Port Fee, except that the Purge Port Fee is lower for the first five ports.¹⁵ In addition, the Purge Port Fee is in line with costs for ports at other options exchanges.¹⁶ The Purge Port Fee is also reasonable because it reflects a structure that is not novel in the options markets but rather, as a graduated fee, is similar to that of other options exchanges and competitive with what is offered by other exchanges.

Moreover, SQF and Purge Ports allow Specialists and Market Makers to access information and rely on data available through such ports to provide necessary information to perform market making activities in a swift and meaningful way. The Exchange believes that the progressive nature of the proposed new Purge Port Fees for Specialists and Market Makers is reasonable. Specialists and Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants because Specialists and Market Makers add value through continuous quoting and the commitment of capital. Specialists and Market Makers provide a critical liquidity function across thousands of individual option puts and option calls, a function no other market participants are obligated to perform.

¹⁵ Whereas the proposed Purge Port Fee is \$500 per port per month for each of the first five ports and \$100 per port for each port thereafter, the Phlx CTI Port Fee is \$650 per port per month for the first five ports and \$100 per port thereafter. NOM and BX Options CTI Port Fees are simply \$650 and \$200, respectively. See NOM Chapter XV, Section 3(b) and BX Chapter XV, Section 3(b).

¹⁶ See NOM Pricing Schedule (port fees \$650 or \$750 per port). See also ISE Gemini, LLC ("ISE Gemini") Fee Schedule (port fees \$750 to \$15,000 depending on connectivity levels); and C2 Options Exchange, Incorporated ("C2") (generally assesses port fees \$500 to \$1,000 depending on connectivity levels).

The Exchange believes that establishing the proposed Purge Port Fee is equitable and not unfairly discriminatory in that it will apply uniformly to all similarly situated Participants. All Specialists and Market Makers that use Purge Ports will be assessed the Purge Port Fee in the same way.

Change 2 – Technical Modifications.

The Exchange believes that the proposed technical modifications are fair and reasonable in that they do not impact the application of existing fees but simply enhance clarity and readability. Nor are the proposed technical modifications discriminatory in any respect.

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. Specifically, the Exchange does not believe that its proposal to make changes to Chapter VII, Section B to add new Purge Port Fees will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because it enables the Exchange to continue offering Purge Ports to the benefit of market participants.

The Exchange does not believe that the proposed rule change will impose any undue 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. Moreover, in terms of intra-market competition, the Exchange notes that the proposed assessment of a Purge Port Fee will be applied uniformly to all Participants that are Specialists and Market Makers that use such ports but should have no undue burden on any particular group of users. The proposal is designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup for certain of its connectivity costs, while continuing to offer competitive rates to Participants.

Furthermore, in this instance the proposed Purge Port Fee does not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose revenue and market share as

participants choose to abandon ports. 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. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

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.¹⁷

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:

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2015-120 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-2015-120. 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-2015-120 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.¹⁸

Robert W. Errett
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

NASDAQ OMX PHLX LLC^[1] 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.

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

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VII. OTHER MEMBER FEES

A. No Change

B. Port Fees

(1) Order Entry Port Fee \$650 per month per mnemonic^[25]

^[25]The Order Entry Port Fee will be waived for mnemonics that are used exclusively for complex orders where one of the components of the complex order is the underlying security.

Member organizations will not be assessed an Order Entry Port Fee for additional ports acquired for ten business days for the purpose of transitioning technology. The member organization is required to provide the Exchange with written notification of the transition and all additional ports, provided at no cost, will be removed at the end of the ten business days.

(2) Active SQF Port Fee for ports that receive inbound quotes at any time within that month^[26] \$1,250 per port per month up to a maximum of \$42,000 per month

^[26]Active SQF Port Fees will be capped at \$42,000 per month.

Active SQF ports refer to ports that receive inbound quotes at any time within that month.]

Member organizations will not be assessed an Active SQF Port Fee for additional ports acquired for ten business days for the purpose of transitioning technology. The member organization is required to provide the Exchange with written notification of the transition and all additional ports, provided at no cost, will be removed at the end of the ten business days.

(3) CTI Port Fee \$650 per port per month for each of the first 5 CTI ports, and \$100 per port per month for each port thereafter.

(4) SQF Purge Port Fee \$500 per port per month for each of the first 5 ports, and \$100 per port per month for each port thereafter.

(C) No Change

(D) No Change

(E) No Change

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