For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68047; File No. SR–Phlx–2012–121]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Customer Rebate Program, Multiply Listed Options Transaction Charges and PIXL

October 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that, on October 1, 2012, 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 to: (i) Clarify the Monthly Market Maker Cap [3] in Section II titled ''Multiply Listed Options Fees''; [4] (ii) amend PIXL pricing [5] in Section IV titled ''Other Transaction Fees'', Section A titled ''PIXL Pricing''; and amend and relocate the Customer Rebate Program in Section II to a new Section A.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings,* 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 purpose of the proposed rule change is to amend Sections II and III of the Exchange's Pricing Schedule and create a new Section A. Specifically, the Exchange is proposing to clarify its Pricing Schedule with respect to fees related to an order or quote that is contra to a PIXL Order and included in the Monthly Market Maker Cap calculation, increase the fee for certain orders executed once the Monthly Market Maker Cap has been exceeded and relocate the Customer Rebate Program from Section II to Section A and amend various pricing for that program. Also, the Exchange proposes to amend Section IV related to PIXL Pricing. Each of the amendments will be described below in greater detail.

Section II Amendments

The Exchange is proposing to amend the Monthly Market Maker Cap. Currently, the Monthly Market Maker Cap is $550,000 for equity options transaction fees and Qualified Contingent Cross (''QCC'') Transaction Fees.[6] The Exchange proposes to clarify the fees included in the Monthly Market Maker Cap. Today, the Exchange includes fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction executed resting and responding orders [7] that execute against a PIXL Initiating Order in the Monthly Market Maker Cap calculation. The Exchange proposes to clarify the Pricing Schedule by specifically delineating the various fees that are calculated to arrive at the Monthly Market Maker Cap. The Exchange proposes to amend the Pricing Schedule to note that in addition to equity options transaction fees and QCC Transaction Fees, fee related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL Auction are included in the Monthly Market Maker Cap calculation.

The Exchange also proposes to amend a fee which is assessed once a Specialist [8] or Market Maker [9] has reached the Monthly Market Maker Cap. Currently, Specialists and Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Market Maker Cap are assessed a $0.12 per contract fee, excluding PIXL Orders.[10] The Exchange is proposing to increase this fee from $0.12 per contract to $0.16 per contract and also remove the exclusion for PIXL Orders. The proposal would assess Specialists and Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Market Maker Cap a $0.16 per contract fee and this would now include PIXL Orders. The Exchange

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Today, the Monthly Market Maker Cap is $550,000 for equity option transaction fees and QCC Transaction Fees. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is at least 75% common ownership between the member organizations. All dividend, merger, short stock interest and reversal and conversion strategy executions are excluded from the Monthly Market Maker Cap.

[4] Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are Multiply Listed.

[5] PIXL is the Exchange's price-improvement mechanism where a member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''PIXL Order'') against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent (''Initiating Order'') provided it submits the PIXL order for electronic execution into the PIXL Auction (''Auction'') pursuant to Rule 1080. *See* Exchange Rule 1080(n).

[6] QCC Transaction Fees are defined in Rules 1064(e) and 1080(o). The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is at least 75% common ownership between the member organizations. All dividend, merger, short stock interest and reversal and conversion strategy executions (as defined in this Section II of the Pricing Schedule) are excluded from the Monthly Market Maker Cap.

[7] When the Exchange receives a PIXL Order for auction processing, a PIXL Auction Notification (''PAN'') message is sent over the Exchange's TOPO Plus Orders data feed detailing the side, size, and the stop price of the PIXL Order. Any person or entity may submit a PAN response, provided such response is properly marked specifying the price, size, and side of the market. *See* Rule 1080(n).

[8] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[9] A ''market maker'' includes Specialists (*see* Rule 1020) and ROTs (Rule 1014(b)(i) and (ii), which includes SQTs (*see* Rule 1014(b)(ii)(A)) and RSQTs (*see* Rule 1014(b)(ii)(B))). Directed Participants are also market makers.

[10] A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''PIXL Order'') against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent (''Initiating Order'') provided it submits the PIXL order for electronic execution into the PIXL Auction (''Auction'') pursuant to Rule 1080. *See* Exchange Rule 1080(n).

believes that this amendment will also permit the Exchange to pay certain Customer Rebates which are described below.

The Exchange also proposes to amend and relocate its Customer Rebate Program from Section II of the Pricing Schedule to a new ''Section A'' which would be located before Section I in the Pricing Schedule.[11] The Exchange is proposing to expand the three tier Customer Rebate Program to a four tier Customer Rebate Program. Currently, the Exchange pays rebates for the following Average Daily Volume Thresholds: (i) 0 to 49,999 contracts in a month; (ii) 50,000 to 99,999 contracts in a month; and (iii) over 100,000 contracts in a month. The Exchange is proposing to amend Tier 3 and adopt a Tier 4 so as to have the following tiers: (i) 0 to 49,999 contracts in a month; (ii) 50,000 to 99,999 contracts in a month; (iii) 100,000 to 274,999 contracts in a month; and (iii) over 275,000 contracts in a month. The Exchange believes offering the opportunity to obtain higher rebates, as described below, will incentivize market participants to send order flow to the Exchange.

The Exchange is also proposing to amend Categories A, B, C and D, which currently require the following:

- Category A: Rebate will be paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options, Simple Orders in Non-Penny Pilot Options that remove liquidity and Complex Orders in Non-Penny Pilot Options.
- Category B: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options.
- Category C: Rebate will be paid to members executing electronically-delivered Customer Simple Orders in Non-Penny Pilot Options that add liquidity.
- Category D: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Select Symbols that add liquidity.

The Exchange is proposing to amend these Categories as follows:

- Category A: Rebate will be paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II. Rebate will be paid on PIXL Orders in Section II symbols that execute against non-Initiating Order interest.
- Category B: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II.
- Category C: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Select Symbols in Section I.

In order to analyze the impact on rebates, it is relevant to note how the various Categories were amended in addition to the actual rebates. The proposed Customer Rebate Program[12] table is as follows:

Average daily volume threshold	Rebate per contract categories		
	Category A	Category B	Category C
0 to 49,999 contracts in a month	$0.00	$0.00	$0.00
50,000 to 99,999 contracts in a month	0.07	0.10	0.00
100,000 to 299,999 contracts in a month	0.10	0.14	0.05
over 300,000 contracts in a month	0.12	0.15	0.06

With respect to Category A, which today allows members who transact electronically-delivered Customer Simple Orders in Penny Pilot Options, Simple Orders in Non-Penny Pilot Options that remove liquidity and Complex Orders in Non-Penny Pilot Options to earn Category A rebates, the Exchange is amending this Category to now include all Simple Orders in Non-Penny Pilot Options in Section II (not just orders that remove liquidity). In addition, Complex Orders in Non-Penny Pilot Options will no longer be part of Category A. The fees in Category A will increase for volume over 100,000 contracts. Today, a rebate of $0.09 per contract is paid for volume over 100,000 contracts. The new pricing in Category A will pay a rebate of $0.10 per contract for volume between 100,000 and 274,999 contracts and a rebate of $0.12 per contract for volume over 275,000 contracts.[13] With respect to Simple Orders in Non-Penny Pilot Options that add liquidity that are today included in Category C, these will be included in Category A. These orders will now be subject to a decreased rebate of $0.07 per contract for volume between 50,000 to 99,999 contracts in a month. Today those orders receive a rebate of $0.10 per contract.[14] Finally, Category A will now include PIXL Orders in Section II, except for contracts of PIXL orders that execute against an Initiating Order.[15] These types of orders today are not subject to rebates in the Customer Rebate Program.

With respect to Category B, which today allows members executing electronically-delivered Customer Complex Orders in Penny Pilot Options in Section II to earn Category B rebates, the Exchange proposes to amend this Category to now also include Complex Orders in Non-Penny Pilot Options in Section II (not just Complex Orders in Penny Pilot Options). The fees in Category B will increase for volume over 100,000 contracts. Today, a rebate of $0.10 per contract is paid for volume over 100,000 contracts. The new pricing in Category B will pay a rebate of $0.14 per contract for volume between 100,000 and 274,999 contracts and a rebate of $0.15 per contract for volume over 275,000 contracts.[16] With respect to Complex Orders in Non-Penny Pilot Options that are today included in Category A, these will be included in Category B. These orders will now be subject to an increased rebate of $0.10

[11] The Exchange would also amend the Index to reflect the relocation of the Customer Rebate Program.

[12] The Customer Rebate Program only includes electronically-delivered orders.

[13] Category A will continue to pay no rebate for volume between 0 and 49,999 contracts and a rebate of $0.07 per contract for volume between 50,000 and 99,999 contracts in a month.

[14] Simple Orders in Non-Penny Pilot Options that add liquidity will continue to receive no rebate for volume between 0 to 49,999 contracts. Also, the $0.10 per contract rebate will remain the same for over 100,000 but the tier will now be amended to volume between 100,000 to 274,999 contracts. The $0.12 per contract rebate for volume over 275,000 contracts will also apply to these orders.

[15] A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''PIXL Order'') against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent (''Initiating Order'') provided it submits the PIXL order for electronic execution into the PIXL Auction (''Auction'') pursuant to Rule 1080. *See* Exchange Rule 1080(n).

[16] Category B will continue to pay no rebate for volume between 0 and 49,999 contracts and a rebate of $0.10 per contract for volume between 50,000 and 99,999 contracts in a month.

per contract for volume between 50,000 to 99,999 contracts in a month. Today those orders receive a rebate of $0.07 per contract. Additionally, today for volume over 100,000 contracts, Complex Orders in Non-Penny Pilot Options receive a rebate of $0.09 per contract. This rebate will be increased in the new category, between 100,000 and 274,999 contracts, to $0.14 per contract.[17]

With respect to Category C, which today allows members executing electronically-delivered Customer Simple Orders in Non-Penny Pilot Options that add liquidity in Section II to earn Category C rebates, the Exchange proposes to amend this Category to now include Complex Orders in Select Symbols in Section I. The fees applicable to Complex Orders in Select Symbols that remove liquidity today receive rebates in Category D. These orders will continue to receive the same pricing, except that volume over 100,000 contracts which today pays a $0.05 per contract rebate will apply to contracts between 100,000 to 274,999 and pay the same rebate. Additionally, a rebate of $0.06 per contract will be paid for volume over 275,000 contracts.[18] With respect to Complex Orders in Non-Penny Pilot Options that are today included in Category A, these will be included in Category B. These orders will now be subject to an increased rebate of $0.10 per contract for volume between 50,000 to 99,999 contracts in a month. Today those orders receive a rebate of $0.07 per contract. Additionally, today for volume over 100,000 contracts, Complex Orders in Non-Penny Pilot Options receive a rebate of $0.09 per contract. This rebate will be increased in the new category, between 100,000 and 274,999 contracts, to $0.14 per contract.[19] Complex Orders in Select Symbols for adding liquidity today are not subject to rebates in the Customer Rebate Program. With respect to proposed Category D, as noted above, those Complex Orders in Select Symbols that add liquidity will become part of Category C. Category D will be eliminated.

Finally, the Exchange proposes to amend its Average Daily Volume Threshold calculation. Currently, the Average Daily Volume Threshold is calculated by totaling Customer volume in Multiply Listed Options[20] that are electronically-delivered and executed, except electronic QCC Orders as defined in Exchange Rule 1080(o), and including electronically-delivered and executed Customer Complex Orders in Select Symbols (''Threshold Volume''). Rebates are paid on Threshold Volume in a given month, excluding electronically delivered Customer volume associated with PIXL. The Exchange is proposing to amend the calculation of the Average Daily Volume Threshold to total Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except: (i) electronically-delivered and executed Customer Simple Orders in Select Symbols that remove liquidity; and (ii) electronic QCC Orders, as defined in Exchange Rule 1080(o) (''Threshold Volume''). The Exchange would pay the rebates on the Threshold Volume.[21]

The Exchange believes that the proposed amendments to the Customer Rebate Program will attract additional Customer order flow to the Exchange to the benefit of all market participants.

Section III Amendments

The Exchange is proposing to amend its PIXL Pricing in Section IV of the Pricing Schedule at Part A. Currently, the Exchange assesses PIXL fees on Customers, Professionals,[22] Specialists,[23] Market Makers,[24] Firms and Broker-Dealers. All options traded on the Exchange are eligible for PIXL. Today, the Exchange assesses a fee of $0.07 per contract when an Initiating Order executes against a PIXL Order in the symbols listed in Section I, Select Symbols, and the symbols defined in Section II. The Exchange has different PIXL pricing depending on whether the PIXL order execution was in a Select Symbol (Section I) or Section II symbol.

With respect to the Select Symbols, today, when a PIXL order is contra to the Initiating Order the appropriate Multiply Listed Options Transaction Charge in Section II in Section II of the Pricing Schedule is assessed up to a maximum fee of $0.32 per contract. The Options Transaction Charges are as follows: a Customer is not assessed an Options Transaction Charge, a Professional is assessed a $0.25 per contract Options Transaction Charge in both Penny Pilot and non-Penny Pilot Options, a Specialist and Market Maker are assessed a $0.22 per contract Options Transaction Charge in a Penny Pilot and a $0.23 per contract Options Transaction Charge in a non-Penny Pilot Option, and a Broker-Dealer and Firm are assessed $0.32 per contact because the Options Transactions Charges are greater than the maximum fee.[25]

When a PIXL Order executes in an auction against a resting contra-side order or quote that was present upon the initial receipt of the PIXL Order, the Fee for Removing Liquidity in Section I is assessed on the PIXL Order. The Fees for Removing Liquidity are as follows: Customers are assessed $0.43 per contract, and all other market participants are assessed $0.45 per contract, therefore all market participants today are assessed the maximum fee of $0.32 per contract.[26] The resting contra-side order or quote in

[17] Complex Orders in Non-Penny Pilot Options will continue to receive no rebate for volume between 0 to 49,999 contracts. The $0.15 per contract rebate for volume over 275,000 contracts will also apply to these orders.

[18] Category C will continue to pay no rebate for volume between 0 and 49,999 contracts and 50,000 and 99,999 contracts in a month as is the case today for Complex Orders in Select Symbols that remove liquidity.

[19] Complex Orders in Non-Penny Pilot Options will continue to receive no rebate for volume between 0 to 49,999 contracts. The $0.15 per contract rebate for volume over 275,000 contracts will also apply to these orders.

[20] This includes all options classes defined in Sections I and II. This excludes PHLX Semiconductor Sector℠ (SOX℠), PHLX Housing Sector™ (HGX℠) and PHLX Oil Service Sector℠ (OSX℠) which are assessed Singly Listed Options fees in Section III of the Pricing Schedule despite the fact that these are Multiply-Listed index options. *See* Securities Exchange Act Release No. 66668 (April 3, 2012), 77 FR 20090 (March 28, 2012) (SR–Phlx–2012–35).

[21] Currently, the Customer Simple Orders in Select Symbols are not part of the Average Daily Volume Calculation as the Customer Rebate Program today is limited to the symbols subject to Section II pricing and only Complex Orders that add liquidity in Section I. The Exchange proposes to exclude electronically-delivered and executed Customer Simple Orders in Select Symbols that remove liquidity from the Average Daily Volume Threshold, along with electronic QCC Orders. Today, these excluded orders are not included in the Threshold Volume. The Exchange would pay a rebate on all Customer volume included in the Threshold Volume. Today Customer volume associated with PIXL is excluded from the Threshold Volume, this would be amended and PIXL orders would be subject to a rebate. Today Customer Simples Orders in Select Symbols that remove liquidity and QCC Orders are not entitled to rebates under the Customer Rebate program today and those orders will continue to be excluded.

[22] 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).

[23] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[24] A ''market maker'' includes Specialists (*see* Rule 1020) and ROTs (Rule 1014(b)(i) and (ii), which includes SQTs (*see* Rule 1014(b)(ii)(A)) and RSQTs (*see* Rule 1014(b)(ii)(B)).

[25] The Broker-Dealer Options Transaction Charge in a Penny Pilot is $0.45 per contract and $0.60 per contact in a non-Penny Pilot. The Firm Options Transaction Charge in a Penny Pilot is $0.40 per contract and $0.45 per contact in a non-Penny Pilot. *See* Section II in the Pricing Schedule.

[26] *See* Section I, Part A Simple Order Pricing in the Pricing Schedule.

that scenario is paid the Rebate for Adding Liquidity in Section I.[27]

Today, if a PIXL Order executes in an auction against a Responder or contra-side quotes and/or orders sent in during the auction, the PIXL Order is paid the Rebate for Adding Liquidity in Section I.[28] The Responders and contra-side orders and quotes which were entered during the PIXL Auction, are assessed the Fee for Removing Liquidity in Section I, which is greater than the maximum fee of $0.32 per contract, therefore the PIXL Order is assessed $0.32 per contract.[29]

With respect to Section II symbols, the PIXL Order and the contra-side order or quote are assessed the appropriate Multiply Listed Option Transaction Charge in Section II of the Pricing Schedule up to a maximum fee of $0.32 per contract. Today, a Customer is not assessed an Options Transaction Charge, a Professional is assessed a $0.25 per contract Options Transaction Charge in both Penny Pilot and non-Penny Pilot Options, a Specialist and Market Maker are assessed a $0.22 per contract Options Transaction Charge in a Penny Pilot and a $0.23 per contract Options Transaction Charge in a non-Penny Pilot Option, a Broker-Dealer and Firm are assessed $0.32 per contact because the Options Transactions Charges are greater than the maximum fee.[30] With respect to Section III pricing related to Singly Listed Options, the fees for PIXL pricing are the Section III fees and this will remain the same.

The Exchange is proposing to amend the PIXL pricing. The Exchange proposes to continue to assess a $0.07 per contract Initiating Order fee, unless the market participant has greater than 275,000 contracts per day in a month of Threshold Volume in the Customer Rebate Program, in which case a reduced fee of $0.05 per contract fee would be assessed for the Initiating Order. With respect to the PIXL Order, the Exchange is amending the PIXL fees for Select Symbols (Section I) as follows:

- When the PIXL Order is contra to the Initiating Order a Customer PIXL Order will be assessed $0.00 and all non-Customer market participant PIXL Orders will be assessed $0.30 per contract when contra to the Initiating Order.
- When a PIXL Order is contra to a PIXL Auction Responder, the PIXL Order will either be paid the Rebate for Adding Liquidity or assessed the Fee for Adding Liquidity in Section I and the Responder will be assessed $0.30 per contract.
- When the PIXL Order is contra to a resting order or quote that was on the PHLX book prior to the auction, the PIXL Order will be assessed $0.30 per contract and the resting order or quote will either be paid the Rebate for Adding Liquidity or assessed the Fee for Adding Liquidity in Section I. If the resting order or quote that was on the PHLX was entered during the Auction, the PIXL Order will receive the Rebate for Adding Liquidity or assessed the Fee for Adding Liquidity in Section I and the resting order or quote will be assessed $0.30.

With respect to the PIXL Order, the Exchange is amending is amending the PIXL fees for Section II symbols as follows:

- When the PIXL Order is contra to the Initiating Order a Customer PIXL Order will be assessed $0.00 and non-Customer PIXL Orders will be assessed $0.30 per contract.
- When a PIXL Order is contra to a PIXL Auction Responder, a Customer PIXL Order will be assessed $0.00, other market participants will be assessed $0.30 per contract, and a Responder will be assessed $0.30 per contract, unless the Responder is a Customer, in which case the fee will be $0.00 per contract.
- When a PIXL Order is contra to a resting order or quote a Customer PIXL Order will be assessed $0.00, other market participants will be assessed $0.30 per contract and the resting order or quote will be assessed the appropriate Options Transaction Charge in Section II.

In analyzing the impact of these amendments, the Exchange's amendments to the Initiating Order provides market participants the opportunity to lower the fee by transacting a greater number of Customer Volume. With respect to the Select Symbols (Section I), the Exchange today assesses a PIXL Order the Options Transaction Charges in Section II with a maximum fee of $0.32 per contract. When a non-Customer PIXL order is contra to the Initiating Order a non-Customer PIXL Order that today is assessed the appropriate Options Transaction Charge in Section II, which is capped at $0.32 per contract, would instead pay $0.30 per contract. The Customer PIXL Order would not be assessed a fee. When a PIXL Order is contra to a resting order or quote that was on the PHLX book prior to the auction, the PIXL Order today is assessed the Fee for Removing Liquidity in Section I, which is capped at $0.32 per contract, would instead pay $0.30 per contract. The resting contra-side order or quote on the book prior to the auction will continue to be paid the Rebate/Fee for Adding Liquidity in Section I as they are today.[31] When a PIXL Order executes in an auction against a Responder that responds with either a contra-side quote or order sent in during the auction, the Responder is assessed the Fee for Removing Liquidity in Section I and will be capped at $0.30 per contract instead of the $0.32 cap that is assessed today. The PIXL Order will continue to receive the Rebate for Adding Liquidity or assessed the Fee for Adding Liquidity in Section I.

With respect to Section II symbols, the PIXL Order and the contra-side order or quote which today are assessed the appropriate Multiply Listed Option Fee in Section II of the Pricing Schedule, up to a maximum fee of $0.32 per contract, would be assessed $0.30 per contract, except for Customers, who are not assessed a fee, when a PIXL Order is contra an Initiating Order. When a PIXL Order is contra to a PIXL Auction Responder a Customer PIXL Order would be assessed $0.00 (which is the case today), and other market participants would be assessed $0.30 per contract as well as the Responder, unless the Responder is a Customer, in which case there is no fee. When a PIXL Order is contra to a resting order or quote the Customer would be assessed no fee, all other market participants would be assessed $0.30 per contract and the resting order or quote would continue to be assessed the Options Transaction Charges in Section II. The impact of these amendments with regard to non-Customer market participants is that a Professional which today is assessed a $0.25 per contract Options Transaction Charge in both Penny Pilot and non-Penny Pilot Options would pay an increased fee of $0.30 per contract, a Specialist and Market Maker that today are assessed a

[27] The Rebate for Adding Liquidity is $0.26 per contract for a Customer, $0.23 per contract for a Specialist, Market Maker or Professional. A Firm and Broker-Dealer do not receive a Rebate for Adding Liquidity. *See* Section I, Part A of the Pricing Schedule.

[28] *Id.*

[29] The Fees for Removing Liquidity are as follows: Customers are assessed $0.43 per contract, and all other market participants are assessed $0.45 per contract, therefore all market participants today are assessed the maximum fee of $0.32 per contract. *See* Section I, Part A.

[30] The Broker-Dealer Options Transaction Charge for a Penny Pilot Options is $0.45 per contract and $0.60 per contact in a non-Penny Pilot Option. The Firm Options Transaction Charge in a Penny Pilot Option is $0.40 per contract and $0.45 per contact in a non-Penny Pilot Option. *See* Section II in the Pricing Schedule.

[31] The Fee for Adding Liquidity in Section I is $0.05 per contact for Firms and Broker-Dealers. All other market participants are not assessed a Fee for Adding Liquidity. See Section I, Part A of the Pricing Schedule.

$0.22 per contract Options Transaction Charge in a Penny Pilot and a $0.23 per contract Options Transaction Charge in a non-Penny Pilot Option would pay an increased fee of $0.30 per contract, a Broker-Dealer and Firm which today are assessed $0.32 per contact would pay decreased fees of $0.30 per contract. In addition, the Exchange is proposing to note that the Monthly Market Maker Cap will apply except with respect to the Initiating Order fee which is not included in the cap. PIXL Orders are proposed as part of the Monthly Market Maker Cap as noted in this filing. The Exchange also proposes to specify in the Pricing Schedule that all other fees discussed in Section II, including Payment for Order Flow and surcharges will also apply as appropriate.[32] The Exchange believes that the PIXL fees which will be the same for all market participants, except Customers, in each Section I and II should encourage the initiation of price improvement auctions.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [33] in general, and furthers the objectives of Section 6(b)(4) of the Act [34] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Section II Amendments

Monthly Market Maker Cap

The Exchange's clarification to the Monthly Market Maker Cap is reasonable, equitable and not unfairly discriminatory because it would clarify in the Pricing Schedule that the fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction is included in the Monthly Market Maker Cap calculation. In addition, all Specialists and Market Makers are afforded the opportunity to cap their fees.

The Exchange's proposal to amend a fee which is assessed once a Specialist or Market Maker has reached the Monthly Market Maker Cap is reasonable because the Exchange is now including fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction in the Monthly Market Maker Cap. The proposal to remove the exclusion for PIXL Orders and increase fee (from $0.12 to $0.16 per contract) once the Monthly Market Maker Cap is exceeded and a Specialist or Market Maker is contra an electronic Customer order is reasonable because the Exchange is affording Specialists and Market Makers the opportunity to reach the Monthly Market Maker Cap earlier, by including PIXL orders. Also, the fee is assessed only when the Monthly Market Maker Cap is exceeded and Specialists and Market Makers are on the contra-side of an electronically-delivered and executed Customer order.[35] The Exchange believes that this amendment will also permit the Exchange to pay certain Customer Rebates based on tiers and average daily volume thresholds which are described below and now also permits rebates for PIXL Orders.

The Exchange's proposal to increase the fee (from $0.12 to $0.16 per contract) which is assessed once a Specialist or Market Maker has reached the Monthly Market Maker Cap is equitable and not unfairly discriminatory because all Specialist and Market Makers would be uniformly assessed the fee as long as they have reached the cap and are contra to an electronically-delivered Customer order.

Customer Rebate Program

The Exchange's proposal to amend the current three tier Customer Rebate Program to a four tier program is reasonable, equitable and not unfairly discriminatory because it will further incentivize a greater number of market participants to take advantage of the Customer Rebate Program because of the added categories of orders eligible for the Customer Rebate Program and also because the Exchange is offering market participants the opportunity to obtain higher rebates with the addition of the new tier.

The Exchange also believes that the amendments to the Customer Rebate Program are reasonable because the Customer liquidity that this program attracts to the market benefits all market participants. The program now includes new categories of orders that were not previously included in the Average Daily Volume Threshold such as PIXL Orders in Section II and Complex Orders in Select Symbols (Select I) that add liquidity.

The Exchange also believes that the amendments to the Customer Rebate Program are equitable because other than the Simple Orders in Non-Penny Pilot Options that add liquidity, which today are included in Category C, all other order types will receive the same or higher rebates as described in the purpose section.[36] With respect to the Average Daily Volume calculation, the Exchange believes that the amendments are reasonable, equitable and not unfairly discriminatory because Select Symbols will now be included with the exception of Simple Orders that remove liquidity (Simple Orders that add liquidity will be included in Threshold Volume) [37] and rebates will now be paid on PIXL volume. The Exchange believes the amendments are reasonable because the Exchange is offering market participants an opportunity to earn rebates on order not subject to the Customer Rebate Program today and market participants also have an opportunity to earn higher rebates. The Exchange believes that the amendments are equitable and not unfairly discriminatory because they will be uniformly applied to all market participants.

Section III Amendments—PIXL

The Exchange believes that the amendments to the PIXL pricing are reasonable, because the Exchange is proposing to simplify the PIXL pricing to assess no fees to Customers uniformly and to assess all non-Customer market participants the same fees except with respect to Section II when a PIXL Order is contra to a resting order or quote. In this case the resting contra-side orders or quotes will continue to pay the appropriate Options Transaction Charges in Section II. Also, while there will be fee increases for Professionals, Specialists and Market Makers in Section II, the Exchange is now proposing to include PIXL Orders as orders that are eligible for rebates in the Customer Rebate Program. The Exchange also believes that its fees are reasonable because they are within the range of fees that are assessed by the International Securities Exchange, LLC (''ISE'') for price improving orders

[32] Payment for Order Flow fees apply today as well.

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(4).

[35] The contra-side Customer is not assessed a fee in this scenario.

[36] These orders will now be subject to a decreased rebate of $0.07 per contract for volume between 50,000 to 99,999 contracts in a month. Today those orders receive a rebate of $0.10 per contract. Simple Orders in Non-Penny Pilot Options that add liquidity will continue to receive no rebate for volume between 0 to 49,999 contracts. Also, the $0.10 per contract rebate will remain the same for overs 100,000 but the tier will now be amended to volume between 100,000 to 274,999 contracts. The $0.12 per contract rebate for volume over 275,000 contracts will also apply to these orders.

[37] Complex Orders in Select Symbols are included in the Threshold Volume today and will continue to be included with this amendment.

(''Fees for Responses to Crossing Orders.'') [38]

The Exchange also believes that it is reasonable to continue to assess a $0.07 per contract Initiating Order fee, unless the market participant has greater than 275,000 contracts per day in a month of Threshold Volume in the Customer Rebate Program, in which case a decreased $0.05 per contract fee would be assessed for the Initiating Order, because this incentivizes market participants to send additional Customer PIXL Order flow to the Exchange which reduces the market participant's fees once a certain volume (275,000 contracts per day in a month) is obtained and the Customer liquidity benefits all market participants.

The Exchange believes that the amendments to PIXL pricing in Select Symbols (Section I) are equitable and not unfairly discriminatory because the fees will be lower for all market participants that today pay $0.32 per contract and Customer PIXL Orders will remain free. Responder fees will also be reduced from $0.32 to $0.30 per contract. The Exchange believes that the amendments to the PIXL pricing in Section II symbols are equitable and not unfairly discriminatory because Customer PIXL Orders will remain free in all instances and all non-Customer market participant PIXL Orders will be assessed a fee of $0.30 per contract fee uniformly. The Exchange also believes that it is equitable and not unfairly discriminatory to continue to assess a $0.07 per contract Initiating Order fee, unless the market participant has greater than 275,000 contracts per day in a month of Threshold Volume in the Customer Rebate Program, in which case a $0.05 per contract Initiating Order fee would be assessed, because these fees would be assessed uniformly on all market participants and would further incentivize market participants to transact PIXL Orders. In addition, the differential between the Initiating Order and the Responders to a PIXL Order is $0.23 or $0.25 per contract as proposed, which is less than or equal to the current differential.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the new Customer Rebate Program will attract additional Customer order flow to the benefit of all market participants.

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.[39] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–121 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–121. This file number should be included on the subject line if email 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 Web site 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–2012–121 and should be submitted on or before November 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Kevin M. O'Neill,

Deputy Secretary.

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[38] ISE assesses a range of Fees for Responses to Crossing Orders from $0.18 to $0.40 per contract depending on the symbol.

[39] 15 U.S.C. 78s(b)(3)(A)(ii).

[40] 17 CFR 200.30–3(a)(12).