7. Do commenters believe that the ability of market makers and authorized participants to arbitrage throughout the day will be sufficiently robust to ensure that prices of the Shares closely track the intraday NAV per Share of the Fund? Are there circumstances in which significant premiums or discounts could develop?

8. Do commenters believe that the third-party model that would be used to value the Fund's OTC down-and-in put options would accurately reflect prices at which the Fund could enter into new OTC down-and-in put options or unwind existing OTC down-and-in put options? Why or why not? Should the Exchange or the Fund be required to provide further disclosure relating to the formula and methodology of such third-party pricing model? Would such disclosure better help investors to price the OTC down-and-in put options held by the Fund?

9. Are there any characteristics unique to barrier options on equity securities that would make them more difficult to value than options on equity securities without a barrier feature? If so, what are they and how could they potentially impact the valuation?

10. Are there any circumstances under which the nature of barrier options would cause market makers to widen bid and offer spreads for the Shares? For example, if a significant number of components stocks are at or near a 20% loss a few days before expiration of the down-and-out-put options, would market makers widen their spreads to reflect the added uncertainty?

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–NYSEArca–2012–108 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 Numbers SR–NYSEArca–2012–108. 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 such filings 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–NYSE Arca–2012–108 and should be submitted on or before February 13, 2013. Rebuttal comments should be submitted by February 27, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01224 Filed 1–22–13; 8:45 am]

BILLING CODE 8011–01–P

[37] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68674; File No. SR– Phlx–2013–01]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Pricing Schedule

January 16, 2013.

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 January 2, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

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

The Exchange to amend the Exchange's Pricing Schedule at Section A, entitled ''Customer Rebate Program,'' Section I entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' [3] Section II entitled ''Multiply Listed Options Fees'' [4] and at Section IV entitled ''Other Transaction Fees.'' Specifically, the Exchange proposes to amend the Customer Rebate Program, Select Symbols,[5] Simple and Complex Order [6] fees and rebates, the applicability of Payment for Order Flow [7] and PIXL [8] Pricing.

The text of the proposed rule change is provided in *Exhibit 5.* The text of the proposed rule change is also available on the Exchange's Web site 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

[3] The rebates and fees in Section I apply to certain Select Symbols which are listed in Section I of the Pricing Schedule.

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

[5] The Select Symbols are listed in Section I of the Pricing Schedule.

[6] 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 exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[7] The Payment for Order Flow program started on July 1, 2005 as a pilot and after a series of orders extending the pilot became effective on April 29, 2012. *See* Securities Exchange Act Release No. 52114 (July 22, 2005), 70 FR 44138 (August 1, 2005) (SR–Phlx–2005–44); 57851 (May 22, 2008), 73 FR 31177 (May 20, 2008) (SR–Phlx–2008–38); 55891 (June 11, 2007), 72 FR 333271 (June 15, 2007) (SR–Phlx–2007–39); 53754 (May 3, 2006), 71 FR 27301 (May 10, 2006) (SR–Phlx–2006–25); 53078 (January 9, 2006), 71 FR 2289 (January 13, 2006) (SR–Phlx–2005–88); 52568 (October 6, 2005), 70 FR 60120 (October 14, 2005) (SR–Phlx–2005–58); and 59841 (April 29, 2009), 74 FR 21035 (May 6, 2009) (SR–Phlx–2009–38).

[8] PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXL℠). *See* Rule 1080(n).

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 accomplish various objectives. First, the Exchange proposes to amend the Customer Rebate Program to incentivize market participants to increase the amount of Customer order flow they transact on the Exchange. Towards this end, the Exchange proposes the addition of Category D to the Customer Rebate Program relating to Customer Simple Orders in Select Symbols. The Exchange also proposes to offer certain credits when an order, which is sent to the Exchange, is routed to an away market. Second, the Exchange proposes to remove certain Select Symbols from Section I and instead assess the fees and offer caps as specified in Section II of the Pricing Schedule. The Exchange believes that the pricing in Section II, coupled with the proposed enhancements to the Customer Rebate Program may encourage an increase in Customer transactions in those symbols. Third, the Exchange proposes to amend the Section I pricing in Simple and Complex Orders and PIXL Pricing to also encourage additional Customer order flow by not assessing fees to Customers. The Exchange proposes to lower the Simple Order Fees for Removing Liquidity and certain PIXL Pricing to encourage additional Simple Order transactions. Fourth, the Exchange proposes to increase the Simple Order Fees for Adding Liquidity, adopt Complex Order Fees for Adding Liquidity and increase certain Complex Orders Fees for Removing Liquidity to permit the Exchange to offer additional rebates in the Customer Rebate Program in Section A. Fifth, the Exchange proposes to lower the Complex Order Specialist and Market Fees for Removing Liquidity in Select Symbols, as well as auctions and openings, and amend the applicability of Payment for Order Flow Fee for Select Symbols and broadcast messages to encourage greater Customer order interaction on the Exchange.

Customer Rebate Program

The Exchange is proposing to amend its Customer Rebate Program in Section A of the Pricing Schedule. Currently, the Exchange has a four-tiered Customer Rebate Program 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 274,999 contracts in a month	0.10	0.14	0.05
over 275,000 contracts in a month	0.12	0.15	0.06

(a) Changes to the Tiers and Rebate Rates

At this time, the Exchange proposes to reduce the Customer Rebate Program to a three-tiered rebate structure. The Exchange proposes to amend Tier 1 which is currently 0 to 49,999 contracts in a month to 0 to 99,999 contracts in a month. The Exchange is not proposing to amend the rebate rates in Categories A, B or C for Tier 1. Those rebates will remain at $0.00 per contract. Next, the Exchange is proposing to amend Tier 2 which is currently 50,000 to 99,999 contracts in a month to 100,000 to 349,999 contracts in a month. The Exchange proposes to amend the Tier 2 rate in Category A from $0.07 to $0.10 per contract. The Exchange proposes to amend the Tier 2 rate in Category B from $0.10 to $0.12 per contract. The Exchange proposes to amend the Tier 2 rate in Category C from $0.00 to $0.13 per contract. The Exchange proposes to eliminate Tier 3 which is currently 100,000 to 274,999 contracts in a month.[9] The Exchange proposes to amend current Tier 4 which awards rebates over 275,000 contracts in a month and rename it Tier 3 and award rebates over 350,000 contracts in a month. The Exchange proposes to amend the new Tier 3 rate in Category A from $0.12 to $0.15 per contract. The Exchange would not amend the Tier 3 rate in Category B. The Exchange proposes to amend the Tier 3 rate in Category C from $0.06 to $0.15 per contract. The Exchange is not proposing to amend the types of orders that qualify for Categories A, B or C.[10]

The Exchange also proposes to add another Category of orders eligible for rebates entitled "Category D." This new category would pay rebates to members executing electronically-delivered Customer Simple Orders in Select Symbols in Section I. Also, the rebate would be paid on PIXL Orders in Section I symbols that execute against non-Initiating Order interest.[11] The Exchange proposes to pay the following Category D rebates: no rebate for Tier 1, a $0.05 per contract rebate for Tier 2 and a $0.07 per contract rebate for Tier 3. The Exchange also proposes to add the words "Tier 1," "Tier 2," and "Tier 3" to the Pricing Schedule to further clarify the tiers. The proposed Customer Rebate Program would be as follows:

Average daily volume threshold	Rebate per contract categories			
	Category A	Category B	Category C	Category D
Tier 1: 0 to 99,999 contracts in a month	$0.00	$0.00	$0.00	$0.00

[9] Currently, Tier 3 pays the following rebates: A Category A rebate of $0.10 per contract, a Category B rebate of $0.14 per contract and a Category C rebate of $0.05 per contract.

[10] The Exchange notes that it will evaluate the tiers monthly and may file modifications to the tiers periodically depending on market conditions.

[11] This application of the Category D rebate to PIXL Orders is similar to the current application of the Category A rebate to PIXL Orders.

Average daily volume threshold	Rebate per contract categories			
	Category A	Category B	Category C	Category D
Tier 2: 100,000 to 349,999 contracts in a month	0.10	0.12	0.13	0.05
Tier 3: over 350,000 contracts in a month	0.15	0.15	0.15	0.07

(b) Changes to Average Daily Volume Calculation

Currently, the Exchange calculates Average Daily Volume Threshold by totaling Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with the following: (i) Electronically-delivered and executed Customer Simple Orders in Select Symbols that remove liquidity; and (ii) electronic Qualified Contingent Cross Orders (''QCC Orders''),[12] as defined in Exchange Rule 1080(o) (''Threshold Volume''). Rebates are paid on Threshold Volume.

The Exchange proposes to amend the Average Daily Volume Calculation by eliminating Customer volume in Multiply-Listed Options that are electronically-delivered and executed except for volume associated with electronically-delivered and executed Simple Orders in Select Symbols that remove liquidity. The Exchange is proposing to amend the Average Daily Volume by eliminating the exclusion of the electronically-delivered and executed Customer Simple Orders in Select Symbols that remove liquidity. The QCC Orders would be the only exception when calculating Customer volume in Multiply-Listed Options that are electronically-delivered in the Average Daily Volume Threshold calculation.[13]

(c) Credit for Member Qualifying for Tier 2 and 3 Rebates

The Exchange proposes to reduce Routing Fees in Section V of the Exchange's Pricing Schedule for member organizations that qualify for Tier 2 or Tier 3 of the Customer Rebate Program. Specifically, the Exchange proposes to credit member organizations that qualify for either a Tier 2 or Tier 3 rebate with a credit of $0.04 per contract, which credit would be applied to Routing Fees, as specified in Section V of the Pricing Schedule, when a Customer order is routed to NASDAQ OMX BX, Inc. (''BX Options'') or the NASDAQ Options Market LLC (''NOM''). Member organizations that qualify for either a Tier 2 or Tier 3 rebate would be entitled to receive a $0.10 per contract credit, which credit would be applied to Routing Fees, specified in Section V of the Pricing Schedule, when a Customer order is routed to an away market other than BX Options or NOM.

The Exchange believes that the proposed amendments to the Customer Rebate Program, including the credit proposed for Routing Fees, would further incentivize members to transact Customer orders on the Exchange. The Exchange believes the proposed amendments will attract additional Customer order flow to the Exchange for the benefit of all market participants.

Section I Amendments

(a) Select Symbols

The Exchange displays a list of Select Symbols in its Pricing Schedule at Section I, which symbols are subject to the rebates and fees in that section. The Exchange is proposing to delete the following symbols from the list of Select Symbols in Section I of the Pricing Schedule: Arena Pharmaceuticals, Inc. (''ARNA''), Alcoa, Inc. (''AA''), Advanced Micro Devices, Inc. (''AMD''), Cisco Systems, Inc. (''CSCO''), SPDR DOW Jones Industrial Average (''DIA''), iShares MSCI EAFE Index Fund (''EFA''), iShares MSCI Brazil Index Fund (''EWZ''), Ford Motor Co. (''F''), (Direxion Daily Financial Bull 3x Shares (''FAS''), Direxion Daily Financial Bear 3X Shares (''FAZ''), iShares FTSE China 25 Index Fund (''FXI''), Market Vectors Gold Miners ETF (''GDX''), General Electric Company (''GE''), Intel Corporation (''INTC''), Nokia Corporation (''NOK''), Oracle Corporation (''ORCL''), Pfizer, Inc. (''PFE''),Research in Motion Limited (''RIMM''), ProShares UltraShort S&P 500 (''SDS''), Sirius XM Radio Inc. (''SIRI''), iShares Silver Trust (''SLV''), ProShares UltraShort 20+ Year Treasury (''TBT''), iShares Barclays 20 Year Treasury (''TLT''), Direxion Daily Small Cap Bear 3X Shares (''TZA''), United States Natural Gas (''UNG''), United States Oil (''USO''), Vale S.A. (''VALE''), iPath S&P 500 VIX ST Futures ETN (''VXX''), Verizon Communications Inc. (''VZ''), SPDR Select Sector Fund—Energy (''XLE''), SPDR Select Sector Fund (''XLI'') and Yahoo! Inc. (''YHOO'') (collectively, ''Proposed Deleted Symbols''). These Proposed Deleted Symbols would be subject to the fees, fee caps and related discounts in Section II of the Pricing Schedule entitled ''Multiply Listed Options Fees.'' The Exchange believes that by assessing the Proposed Deleted Symbols the pricing in Section II of the Pricing Schedule the Exchange will attract order flow to the Exchange.

(b) Simple Orders

The Exchange proposes to amend the Simple Order rebates and fees in Section I, Part A of the Pricing Schedule. Currently, the Exchange pays the following Simple Order Rebates for Adding Liquidity: Customer $0.26 per contract, Specialist[14] and Market Maker[15] $0.23 per contract, Firm and Broker-Dealer receive no rebate and Professional[16] receives a $0.23 per contract rebate. The Exchange proposes to not pay a Customer or Professional rebate and decrease the Specialist and Market Maker rebate from $0.23 to $0.20 per contract, however the Exchange would only pay a Specialist or Market Maker Rebate for Adding Liquidity in Simple Orders if the Specialist or Market Maker is contra to a Specialist, Market Maker, Firm, Broker-Dealer or Professional. In other words, the

[12] A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer (''NBBO'') and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. *See* Rule 1080(o). *See also* Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (''QCTs'') that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

[13] QCC Orders are excluded today.

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

[15] 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)). Directed Participants are also market makers.

[16] 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).

Specialist or Market Maker would not receive a Simple Order Rebate for Adding Liquidity if they are contra to a Customer and instead would be assessed the Simple Order Fee for Adding Liquidity, which will be discussed below. The Rebate for Adding Liquidity for Customer, Broker-Dealer, Firm and Professional would be marked ''N/A'' as those market participants would be assessed a Fee for Adding Liquidity to be discussed below. In addition, the Exchange proposes to add a note to the Pricing Schedule indicating the above exception to the payment of the Specialist and Market Maker Rebate for Adding Liquidity in Simple Orders.

Currently, the Exchange assesses the following Simple Order Fees for Adding Liquidity: Customer, Specialist, Professional and Market Maker pay no fee, a Firm and Broker-Dealer pay $0.05 per contract. The Exchange proposes to amend the Simple Order Fees for Adding Liquidity as follows: a Customer would continue to not be assessed however instead of ''N/A'' the Exchange would reflect the fee as ''$0.00'' on the Pricing Schedule. A Specialist and Market Maker would be assessed a $0.10 per contract Simple Order Fee for Adding Liquidity, but only when contra to a Customer order. If the Specialist or Market Maker is contra to a Specialist, Market Maker, Firm, Broker-Dealer or Professional, then the Specialist or Market Maker would be entitled to the Simple Order Rebate for Adding Liquidity.

As explained above, Specialists and Market Makers receive a Rebate for Adding Liquidity when contra to a Specialist, Market Maker, Firm, Broker-Dealer and Professional. The Firm and Broker-Dealer Fees for Adding Liquidity would be increased from $0.05 to $0.45 per contract. A Professional would be assessed $0.45 per contract pursuant to this proposal as compared to no fee.

Currently the Exchange assesses the following Simple Orders Fees for Removing Liquidity: A Customer is assessed $0.43 per contract, a Specialist, Market Maker, Firm, Broker-Dealer and Professional are assessed $0.45 per contract. The Exchange proposes to decrease the Customer Fee for Removing Liquidity from $0.43 to $0.00 per contract. The Exchange also proposes to decrease the Specialist, Market Maker, Firm, Broker-Dealer and Professional fees from $0.45 to $0.44 per contract.

The Exchange believes that decreasing certain Simple Order fees will incentivize market participants to send order flow to the Exchange, particularly Customer order flow. In addition, the Exchange believes that the increased fees would allow the Exchange to offer additional Customer rebates as proposed in the Customer Rebate Program to attract liquidity to the Exchange.

(c) Complex Orders

The Exchange proposes to amend the Complex Order rebates and fees in Section I, Part B of the Pricing Schedule. The Exchange currently pays the following Complex Order Rebates for Adding Liquidity: a Customer is paid $0.32 per contract and Specialists, Market Makers, Firms, Broker-Dealers and Professionals are paid $0.10 per contract. The Exchange proposes to eliminate the Rebates for Adding Liquidity in Complex Orders. Currently, Customers are paid a $0.06 Complex Order Rebate for Removing Liquidity. No other market participant is paid a Complex Order Rebate for Removing Liquidity. The Exchange proposes to eliminate the Customer Complex Order Rebate for Removing Liquidity. The Exchange's proposal would therefore pay no rebates in Section I, Part B with respect to Complex Orders.

The Exchange proposes to adopt a Complex Order Fee for Adding Liquidity of $0.10 per contract that will be applicable to Specialists, Market Makers, Firms, Broker-Dealers and Professionals. Customers would not be assessed a Complex Order Fee for Adding Liquidity.

The Exchange currently assesses the following Complex Order Fees for Removing Liquidity: $0.39 per contract for Specialists, Market Makers, Firms, Broker-Dealers and Professionals. Customers are not assessed a Complex Order Fee for Removing Liquidity. The Exchange is proposing to decrease the Specialist and Market Maker Complex Order Fees for Removing Liquidity from $0.39 to $0.25 per contract. The Exchange proposes to increase the Complex Order Fees for Removing Liquidity for Firms, Broker-Dealers and Professionals from $0.39 to $0.50 per contract. A Customer would continue to not be assessed a Complex Order Fee for Removing Liquidity. The Exchange is proposing to decrease certain fees to incentivize market participants to transact Complex Orders on the Exchange and the Exchange is proposing to increase certain fees in order that it may offer additional rebates in the Customer Rebate Program as described herein.

(d) Complex Auctions, Non-Complex Auctions and the Opening Process

Today the Exchange pays market participants for Customer executions that occur as part of a Complex electronic auction [17] and the opening process the Complex Order Rebate for Removing Liquidity. Customer executions that occur as part of a non-Complex auction [18] are paid the Simple Order Rebate for Removing Liquidity, except when contra to another Customer order. Today, the Exchange does not assess a Fee for Removing Liquidity for transactions that occur either as part of a Complex electronic auction or a non-Complex electronic auction.

The Exchange proposes to no longer pay rebates for Customer executions that occur as part of a Complex electronic auction, the opening process or a Complex Order or a non-Complex auction. In addition, the Exchange would not assess any fees for transactions that occur as part of a Complex electronic auction, the opening process or a non-Complex electronic auction, as is the case today for Customer orders. The Exchange believes that assessing no fees and paying no rebates for transactions executed during certain auctions and the opening process would benefit market participants. While no rebates would be paid, there would also be no fees assessed.

Currently, the Specialists and Market Makers pay the Simple Order Fee for Removing Liquidity during the opening the process. The Exchange proposes to assess Specialists and Market Makers the Simple Order Fee for Adding Liquidity if contra to a Customer during the opening process. Specialists and Market Makers will continue to pay the Simple Order Fee for Removing Liquidity during the opening the process if contra to a Specialist, Market Maker, Firm, Broker-Dealer or Professional.

(e) Payment for Order Flow Fees

Currently, Payment for Order Flow [19] Fees are not collected on transactions in

[17] A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (''COLA'').

[18] A non-Complex electronic auction includes the Quote Exhaust auction and, for purposes of these fees, the opening process.

[19] The Payment for Order Flow (''PFOF'') Program assesses fees to Specialists and Market Makers resulting from Customer orders (''PFOF Fees''). The PFOF fees are available to be disbursed by the Exchange according to the instructions of the Specialist or Market Maker to order flow providers who are members or member organizations who submit, as agent, Customer orders to the Exchange through a member or member organization who is acting as agent for those customer orders. Any excess PFOF funds billed but not utilized by the Specialist or Market Maker are carried forward unless the Specialist or Market Maker elects to have those funds rebated on a pro rata basis, reflected as a credit on the monthly invoices. At the end of each calendar quarter, the Exchange calculates the

Continued

Select Symbols.[20] The Exchange is proposing to amend the Pricing Schedule to collect Payment for Order Flow Fees on transactions in Select Symbols, except when a Specialist or Market Maker is assessed the Simple Order Fee for Removing Liquidity, in which case the Payment for Order Flow fees would not apply. The Exchange believes that assessing Payment for Order Flow Fees on Select Symbols, similar to other Multiply Listed Symbols, except when a Specialist or Market Maker is assessed the Simple Order Fee for Removing Liquidity would attract additional Customer order flow to the Exchange.

The Exchange also proposes to make a technical amendment in Section II of the Pricing Schedule to amend the Pricing Schedule to change the term ''Single contra-side'' in Part B of Section II of the Pricing Schedule to ''Simple Order'' for consistency in use of its terms.

(f) Order Exposure Alert

The Exchange recently filed to amend Rule 1080(m) to provide for the broadcast of certain orders that are on the Phlx Book.[21] The Exchange proposed to broadcast orders on the Phlx Book by issuing order exposure alerts to all Phlx XL II [22] participants and market participants that subscribe to certain data feeds. The Exchange proposes to specify in Section II of its Pricing Schedule that no Payment for Order Flow Fees would be assessed on transactions which execute against an order for which the Exchange broadcast an order exposure alert in Penny Pilot Options, including Select Symbols. By eliminating Payment for Order Flow Fees the Exchange desires to spur Specialists and Market Makers to transact against orders that triggered the broadcast message.

Section IV Amendments

(a) PIXL

The Exchange proposes to amend Section IV of the Pricing Schedule at Part A. Currently, the Exchange assesses an Initiating Order [23] a $0.07 per contract or $0.05 per contract fee if the Customer Rebate Program Threshold Volume, defined in Section A, is greater than 275,000 contracts per day in a month. The Exchange is proposing to instead assess an Initiating Order a $0.07 per contract or $0.05 per contract fee if the Customer Rebate Program Threshold Volume defined in Section A is greater than *100,000* contracts per day in a month.

In addition, the Exchange also proposes to permit Phlx members and member organizations under common ownership to aggregate their Customer Rebate Program Threshold Volume in order to determine if they qualify for the $0.07 or $0.05 per contract Initiating Order fee. Common ownership is defined as 75 percent common ownership or control.

Today, when a PIXL order in a Select Symbol [24] is contra to a PIXL Auction Responder, the Exchange will either pay a Rebate for Adding Liquidity or assess a Fee for Adding Liquidity in Section I of the Pricing Schedule. Today, a Responder is assessed $0.30 per contract. The Exchange proposes to amend the PIXL pricing for order executions in Select Symbols as follows: when a PIXL Order in a Select Symbol is contra to a PIXL Auction Responder, the PIXL Order would be assessed the Fee for Adding Liquidity in Section I and the Responder would be assessed $0.30 per contract, unless the Responder is a Customer, in which case the fee would be $0.00 per contract.

Additionally, today when a PIXL Order in a Select Symbol is contra to a resting order or quote that was on the PHLX book prior to the auction, the PIXL Order is assessed $0.30 per contract and the resting order or quote is either paid the Rebate for Adding Liquidity or assessed the Fee for Adding Liquidity in Section I. Today, if the resting order or quote that was on the PHLX book was entered during the Auction, the PIXL Order receives the Rebate for Adding Liquidity or is assessed the Fee for Adding Liquidity in Section I and the resting order or quote is assessed $0.30 per contract. The Exchange proposes to amend the PIXL pricing for order executions in Select Symbols as follows: 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 would be assessed the Fee for Removing Liquidity not to exceed $0.30 per contract and the resting order or quote would be assessed the Fee for Adding Liquidity in Section I. Further, the Exchange proposes that if the resting order or quote that was on the PHLX book was entered during the Auction, the PIXL Order would be assessed the Fee for Adding Liquidity in Section I and the resting order or quote would be assessed the Fee for Removing Liquidity not to exceed $0.30 per contract.

The Exchange proposes to eliminate the payment of rebates, not assess fees and lower the Threshold Volume to 100,000 contracts per day in a month in order to incentivize market participants to transact PIXL Orders.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [25] in general, and furthers the objectives of Section 6(b)(4) of the Act [26] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Customer Rebate Program

The Exchange's proposal to amend its Customer Rebate Program in Section A of the Pricing Schedule is reasonable because the Exchange believes that the amended Customer Rebate Program, including the addition of Category D, would further incentivize market participants to transact Customer order flow on the Exchange, which liquidity will benefit all market participants. The Exchange believes that reducing the Customer Rebate Program to a three-tiered rebate structure and amending the tier volumes is reasonable because it should incentivize market participants to increase the amount of Customer orders that are transacted on the Exchange to obtain a rebate. The Exchange proposes herein to amend the Average Daily Volume Threshold to only exclude QCC Orders,[27] which

amount of excess funds from the previous quarter and subsequently rebates excess funds on a pro-rata basis to the applicable Specialist or Market Maker who paid into that pool of funds.

[20] The Select Symbols are listed in Section I of the Pricing Schedule.

[21] *See* Securities Exchange Act Release No. 68517 (December 21, 2012), 77 FR 77134 (December 31, 2012) (SR–Phlx–2012–136).

[22] This proposal refers to ''PHLX XL®'' as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as ''Phlx XL II.'' *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from ''Phlx XL II'' to ''PHLX XL'' for branding purposes.

[23] 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).

[24] Select Symbols are subject to the rebates and fees in Section I of the Pricing Schedule.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(4).

[27] Today, the Average Daily Volume Threshold is calculated by totaling Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except

should permit market participants to include additional orders in the Average Daily Volume Threshold and obtain larger rebates on eligible contracts. In addition, other exchanges employ similar incentive programs.[28]

The Exchange believes that the proposal to amend the rebate tiers is equitable and not unfairly discriminatory because while market participants would need to transact a greater number of contracts to achieve a Tier 2 or 3 rebate, the Exchange is also amending the Average Daily Volume Threshold to allow market participants to receive a rebate on a greater number of eligible contracts. The Exchange's proposal to amend its rebates is equitable and not unfairly discriminatory for the following reasons. With respect to Tier 1 which is currently 0 to 49,999 contracts in a month and would be 0 to 99,999 contracts in a month pursuant to this proposal, the Exchange would continue to pay no rebate. For those market participants executing from 1 to 49,999 contracts, this is the same as today. For those market participants that currently transact 50,000 to 99,999 contracts, they would not be eligible for a rebate under the proposal. The Exchange believes that market participants would be incentivized to transact a greater number of contracts in order to obtain a rebate in Tiers 2 or 3. With respect to Tier 2 which is currently 50,000 to 99,999 contracts in a month, the proposal would amend the contract volume to 100,000 to 349,999 contracts in a month which today is the volume necessary to obtain a Tier 2 rebate or a Tier 3 rebate if the number of contracts is greater than 275,000. A Category A [29] rebate would remain the same as the Exchange proposes to increase Tier 2 in Category A from $0.07 to $0.10 per contract. The Exchange would pay a lower rebate in Category B [30] which would increase from $0.10 to $0.12 per contract. Today, a Tier 2, Category B rebate receives a $0.14 per contract rebate up to 274,999 contracts. A market participant executing between 100,000 to 274,999 contracts today would receive a lower rebate ($0.12 per contract as compared to $0.14 per contract). A Category C [31] rebate would increase for those market participants transacting between 100,000 to 274,999 contracts. Today, a market participant receives no rebate for transacting up to 99,999 contracts in Category C. The Exchange is proposing to pay $0.13 per contract in Category C to market participants that execute between 100,000 and 349,999 contracts in a month. The Exchange also proposes to increase the volume required for current Tier 4 which awards rebates over 275,000 contracts in a month to create a new Tier 3 to award rebates over 350,000 contracts in a month. A market participant executing over 275,000 contracts today in Category A would receive a $0.12 per contract rebate. As mentioned, that rebate would decrease between 100,000 to 349,999 contracts to $0.10 per contract, but would increase over 350,000 contracts to $0.15 per contract. A market participant executing over 275,000 contracts today in Category B would receive $0.15 per contract. As mentioned, that rebate would decrease between 100,000 to 349,999 contracts to $0.12 per contract and would remain the same over 350,000 contracts. A market participant executing over 275,000 contracts today in Category C would receive a $0.06 rebate. As mentioned, that rebate would increase between 100,000 to 349,999 contracts to $0.13 per contract and would also increase over 350,000 contracts to $0.15 per contract. The Exchange believes that while market participants in Categories A and B would need to execute additional contracts to receive the same or greater rebates, the Exchange believes that it continues to incentivize those market participants to direct Customer orders to the Exchange. With respect to Category C, the Exchange is providing greater incentives to transact Customer Complex Orders in Select Symbols.

The Exchange believes that the addition of Category D is reasonable because the Exchange is incentivizing market participants to transact Customer Simple Orders in Select Symbols by offering a rebate. The Exchange also believes that the Category D rebates are equitable and not unfairly discriminatory because all market participants that direct Customer Simple Orders in Select Symbols are eligible for the rebates. The Exchange would pay a Category D rebate of $0.05 per contract to a market participant that transacts between 100,000 and 349,999 contracts in a month. Additionally, the Exchange would pay a Category D rebate of $0.07 per contract to a market participant that transacts over 350,000 contracts in a month.[32]

The Exchange's amended rebate calculation is reasonable because the Exchange proposes to include Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with QCC Orders as defined in Exchange Rule 1080(o). Volume associated with electronically-delivered Customer Simple Orders in Select Symbols that remove liquidity would be included as part of this proposal. This volume is currently excluded. The Exchange believes that the inclusion of the electronically-delivered Customer Simple Orders in Select Symbols that remove liquidity would allow market participants to obtain greater rebates. In addition, the Exchange believes that the amended rebate calculation is equitable and not unfairly discriminatory because the calculation would apply uniformly to all market participants.

The Exchange's proposal to reduce Routing Fees [33] in Section V of the Exchange's Pricing Schedule for member organizations that qualify for a Tier 2 or Tier 3 Customer Rebate in Section A of the Pricing Schedule is reasonable because the Exchange proposes to provide an additional incentive for transacting Customer orders on the Exchange. The Exchange believes that providing a credit of $0.04 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to BX Options or NOM and a $0.10 per contract credit toward the Routing Fee specified in Section V of the Pricing

volume associated with: (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).

[28] *See* the Chicago Board Options Exchange, Incorporated's (''CBOE'') Fees Schedule. CBOE offers each Trading Permit Holder (''TPH'') a credit for each public customer order transmitted by the TPH which is executed electronically in all multiply-listed option classes, excluding QCC trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan, provided the TPH meets certain volume thresholds in a month (Volume Incentive Program).

[29] A Category A rebate is 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. Rebates are paid on PIXL Orders in Section II symbols that execute against non-Initiating Order interest.

[30] A Category B rebate is paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II.

[31] A Category C rebate is paid to members executing electronically-delivered Customer Complex Orders in Select Symbols in Section I.

[32] The Exchange would not pay a Category D rebate for contract volume below 100,000 contracts.

[33] Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative and technical costs associated with operating NOS that are assessed on the Exchange, membership fees at away markets, and technical costs associated with routing options. The Routing Fees enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of orders by the away market.

Schedule if the Customer order is routed to away market other than BX Options or NOM would encourage market participants to transact their Customer orders on the Exchange because they have the opportunity to receive a Tier 2 or Tier 3 rebate and also reduce Routing Fees. The Exchange believes that the proposal to reduce Routing Fees in Section V of the Exchange's Pricing Schedule for members that qualify for a Tier 2 or Tier 3 Customer Rebate in Section A of the Pricing Schedule is equitable and not unfairly discriminatory because any market participant that transacts Customer orders may qualify for the credit. Also, the Routing Fees specified in Section V of the Pricing Schedule are lower for a Customer order routed to BX Options or NOM today and higher for an away market other than BX Options or NOM.[34]

Section I Amendments

The Exchange believes that it is reasonable to remove the Proposed Deleted Symbols from its list of Select Symbols to attract additional order flow to the Exchange. The Exchange believes that applying the pricing in Section II of the Pricing Schedule to the Proposed Deleted Symbols, including the opportunity to receive payment for order flow, will attract order flow to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to remove the Proposed Deleted Symbols because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the rebates and fees in Section I of the Pricing Schedule, which would not include the Proposed Deleted Symbols. Also, all market participants would be uniformly subject to the fees in Section II, which would include the Proposed Deleted Symbols.

The Exchange's proposal to amend the Simple Order rebates and fees in Section I, Part A of the Pricing Schedule is reasonable because the Exchange is proposing to only pay rebates to Specialists and Market Makers in limited circumstances and only when the Exchange is able to fund that rebate with a Simple Order Fee for Removing Liquidity. In other words, if a Specialist or Market Maker is contra to a Specialist, Market Maker, Firm, Broker-Dealer or Professional, these market participants pay Simple Order Fees for Removing Liquidity, which fund the rebate to the Specialist or Market Maker. When a Specialist or Market Maker is contra to a Customer, then the Specialist or Market Maker would pay the Simple Order Fee for Adding Liquidity because the Customer is assessed no Simple Order Fee for Removing Liquidity pursuant to this proposal and instead receives the rebates defined in Category D. The Exchange is reducing the Simple Order Fees for Removing Liquidity because it is no longer paying certain Simple Order rebates to Customers or Professionals. The Exchange believes that its proposal to assess Simple Order Fees for Adding Liquidity is reasonable because as explained herein, the Exchange is funding the rebates it offers to Specialists and Market Makers with those Simple Order Fees for Adding Liquidity.

The Exchange's proposal to amend the Simple Order rebates and fees in Section I, Part A of the Pricing Schedule is equitable and not unfairly discriminatory for the reasons which follow. With respect to Customers, the Exchange would no longer assess a Customer the $0.43 per contract Simple Order Fee for Removing Liquidity, the Exchange would continue not to assess a Customer a Simple Order Fee for Adding Liquidity, as is the case today. In light of eliminating these fees, the Exchange proposes to no longer pay the $0.26 per contract Simple Order Rebate for Adding Liquidity. Customer order flow is assessed no fee because incentivizing members to continue to offer Customer trading opportunities in Simple Orders benefits all market participants through increased liquidity. The Exchange instead proposes to pay Customer rebates for Simple Orders in Select Symbols as part of proposed Category D to the Customer Rebate Program in Section A.[35] Market participants would continue to be incentivized to send Customer order flow to the Exchange and would receive rebates as part of the Customer Rebate Program and would also not pay fees.

With respect to the Simple Order Rebate for Adding Liquidity, the Exchange proposes to reduce the rebates for Specialists and Market Makers from $0.23 to $0.20 per contract and not pay a Professional a rebate[36] because the Exchange proposes to offer market participants greater rebates as part of the Customer Rebate Program in Section A. The Exchange proposes to only pay Specialists and Market Makers a Simple Order Rebate for Adding Liquidity, in limited circumstances, because unlike other market participants, Specialists and Market Makers have burdensome quoting obligations[37] to the market. Specialists and Market Makers would only be paid a Simple Order Rebate for Adding Liquidity when the Specialist or Market Maker is contra to a Specialist, Market Maker, Firm, Broker-Dealer and Professional. The Exchange believes that its proposal to only pay a Specialist or Market Maker a Simple Order Rebate for Adding Liquidity as long as the Specialist or Market Maker is not contra to a Customer is equitable and not unfairly discriminatory because the Exchange is only paying Specialists and Market Makers a Simple Order Rebate to Add Liquidity when it is able to fund that rebate with a Fee for Removing Liquidity. In the case of a Customer, the Exchange proposes not to assess a Customer a Simple Order Fee for Removing Liquidity and therefore in that instance the Exchange would assess the Specialist or Market Maker the Simple Order Fee for Adding Liquidity.

With respect to the Simple Order Fees for Adding Liquidity, the Exchange currently only assesses Firms, Broker-Dealer and Professionals a $0.05 per contract fee. The Exchange proposes to increase those fees to $0.45 per contract for Firms, Broker-Dealer and Professionals to permit the Exchange to continue to pay Customer rebates as proposed in Section A of the Pricing Schedule. The Exchange would assess

[34] The Exchange assesses a fixed fee of $0.10 per contract for non-NASDAQ OMX exchanges and a $0.04 per contract fee for BX Options and NOM. These fixed costs represent overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, which are in addition to the transaction fee assessed by the away market. Also, market participants whose orders routed to away markets are entitled to receive rebates offered by away markets, which rebates would net against fees assessed by the Exchange for routing orders. As explained in a previous rule change, the actual cash outlays for the Exchange to route to BX Options and NOM is lower as compared to routing to other non-NASDAQ OMX exchanges. *See* Securities Exchange Act Release No. 68213 (November 13, 2012), 77 FR 69530 (November 19, 2012) (SR–Phlx–2012–129). The Exchange noted in that rule change that the costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis.

[35] The Exchange believes that market participants would continue to be incentivized to send Customer order flow to the Exchange because the Customer Rebate Program would pay rebates on electronic orders, as is the case today for the rebates that are being eliminated in Section I, Parts A and B. Transactions in the Select Symbols originating on the Exchange floor are subject to pricing in Section II and would not be subject to the rebates in the Customer Rebate Program, as is the case today. The rebates in Section I, Parts A and B are paid on electronic orders today. Also, the Customer Rebate Program would pay rebates on both adding and removing liquidity similar to the rebates that are being eliminated in Section I, Parts A and B.

[36] Today, a Professional is paid a $0.23 per contract Simple Order Rebate for Adding Liquidity.

[37] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

these market participants the same fee because as explained herein the proposed differentiation as between Customers, Specialists and Market Makers and other market participants (Professionals, Firms and Broker-Dealers) recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. As noted previously, the Exchange is proposing not to assess Customers Simple Order fees. The Exchange proposes to assess Specialists and Market Makers a lower fee of $0.10 per contract to recognize the obligations born by these market participants.

With respect to the Simple Order Fees for Removing Liquidity, the Exchange proposes to decrease the fee from $0.45 to $0.44 per contract for Specialists, Market Makers, Professionals, Firms and Broker-Dealers. The Exchange proposes to continue to assess, uniformly, the same fees for all market participants except Customers, as is the case today. As noted previously, the Exchange is proposing not to assess Customers Simple Order fees.[38]

The Exchange's proposal to make technical amendments to the Simple Order Fees for Adding Liquidity to remove ''N/A'' and instead note the fee as ''$0.00'' on the Pricing Schedule is reasonable, equitable and not unfairly discriminatory because the Exchange proposes to indicate that no fee is being assessed to clarify the Pricing Schedule.

As stated herein, the Exchange's proposal to amend Complex Order rebates and fees in Section I, Part B of the Pricing Schedule are reasonable because the Exchange is proposing to only pay rebates in limited circumstances [39] and only when the Exchange is able to fund that rebate with a Complex Order Fee for Removing Liquidity as described more fully above. The Exchange is proposing to decrease certain fees to incentivize Specialists and Market Makers to add Complex Order liquidity to the market and the Exchange is proposing to increase certain fees for Firms, Broker-Dealers and Professionals in order that it may offer additional rebates in the Customer Rebate Program in Section A as described herein.

The Exchange's proposal to amend the Complex Order rebates and fees in Section I, Part B of the Pricing Schedule are equitable and not unfairly discriminatory for the reasons which follow. The Exchange is proposing to eliminate the Complex Order Rebate for Adding Liquidity and the Rebate for Removing Liquidity because the Exchange is amending its Customer Rebate Program in Section A of the Pricing Schedule to include an opportunity to obtain greater rebates. The Exchange is proposing to adopt a Complex Order Fee for Adding Liquidity and assess all market participants, except Customers a fee of $0.10 per contract. The Exchange believes that uniformly assessing market participants, other than Customers, a $0.10 per contract Complex Order Fee for Adding Liquidity is equitable and not unfairly discriminatory. The Exchange proposes to no longer assess Customers Complex Order fees. Today, the Exchange does not assess a Customer Complex Order Fee for Removing Liquidity and would likewise assess no Customer Complex Order Fee for Adding Liquidity with this proposal. Customer order flow is assessed no fee because incentivizing members to continue to offer Customer trading opportunities in Complex Orders benefits all market participants through increased liquidity.

With respect to the Complex Order Fees for Removing Liquidity, as previously noted, the Exchange would continue to not assess a Customer a Complex Order Fee for Removing Liquidity. Today, Specialists, Market Makers, Firms, Broker-Dealers and Professionals all pay a $0.39 per contract Complex Order Fee for Removing Liquidity. The Exchange proposes to reduce the Specialist and Market Maker fee to $0.25 per contract and increase the Firm, Broker-Dealer and Professional fees to $0.50 per contract. The Exchange assesses Specialists and Market Maker lower fees as compared to other market participants, other than Customers, because Specialists and Market Makers have burdensome quoting obligations [40] to the market. In this case, the Exchange is proposing to increase the fee differential in assessing the Complex Order Fee for Removing Liquidity as between Specialist and Market Makers and other non-Customer market participants from 0 to $0.25 per contract ($0.25 vs. $0.50 per contract). The Exchange believes that this fee differential is equitable and not unfairly discriminatory because Specialists and Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants including, but not limited to, PFOF and other costs associated with market making activities,[41] which results in a higher average cost per execution as compared to Firms, Broker-Dealers and Professionals. The Exchange believes that the fees assessed to Specialists and Market Makers in Complex Orders remain aligned with fees assessed to Firms, Broker-Dealer and Professionals when other costs are taken into account.

The Exchange's proposal to amend the Pricing Schedule to change ''Single contra-side'' in Part B of Section II of the Pricing Schedule to ''Simple'' is reasonable, equitable and not unfairly discriminatory because it would further clarify the Pricing Schedule.

The Exchange's proposal to amend Part C of Section I of the Pricing Schedule to no longer pay rebates for Customer executions that occur as part of a Complex electronic auction, the opening process or a non-Complex auction is reasonable because the Exchange proposes to pay Customer rebates as proposed in Section A of the Pricing Schedule. Also, the Exchange has proposed a similar elimination of Customer rebates in Section I, Parts A and B of the Pricing Schedule. In addition, the Exchange's proposal to not assess any fees for transactions that occur as part of a Complex electronic auction, the opening process or a non-Complex electronic auction is reasonable because those transactions would not be subject to rebates. Today, the Exchange does not assess Customer fees on Complex electronic auctions, the opening process or non-Complex electronic auctions. The Exchange believes that it is reasonable to neither pay rebates nor assess fees on these types of transactions and market participants would continue to be incentivized to transact these types of orders on the Exchange.

The Exchange believes that its proposal to no longer pay rebates for Customer executions that occur as part of a Complex electronic auction, the opening process or a non-Complex auction and to no longer assess fees for transactions that occur as part of a Complex electronic auction, the opening process or a non-Complex electronic auction is equitable and not unfairly

[38] Today, the Exchange reduces its Fees for Removing Liquidity, applicable to Specialists and Market Makers, by $0.05 per contract when the Specialist or Market Maker transacts against a Customer Order directed to that Specialist or Market Maker for execution. This is not changing with this proposal.

[39] The Exchange is only proposing to pay rebates to Specialists and Market Makers when they are not contra to a Customer order as described herein.

[40] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[41] Specialists and Market Makers pay for certain data feeds including the SQF Port Fee. SQF Port Fees are listed in the Exchange's Pricing Schedule at Section VII. SQF is an interface that allows Specialists and Market Makers to connect and send quotes into Phlx XL and assists them in responding to auctions and providing liquidity to the market.

discriminatory because the Exchange proposes to not pay rebates or assess fees during auctions and opening, as specified herein, uniformly with respect to all market participants.

The Exchange's proposal to collect Payment for Order Flow Fees on transactions in Select Symbols, except when a Specialist or Market Maker is assessed the Simple Order Fee for Removing Liquidity, is reasonable because it would attract additional Customer order flow to the Exchange because of the benefit that order flow providers would obtain from the Payment for Order Flow Program.[42]

The Exchange's proposal to assess Specialists and Market Makers the Simple Order Fee for Adding Liquidity if contra to a Customer during the opening process is reasonable because the Exchange desires to incentivize Specialists and Market Makers to transact orders during the opening process by lowering costs when the Specialist or Market Maker trades against a Customer.

The Exchange's proposal to assess Specialists and Market Makers the Simple Order Fee for Adding Liquidity if contra to a Customer during the opening process is equitable and not unfairly discriminatory because Specialists and Market Makers serve an important role on the Exchange with regard to order interaction. The Exchange believes that incentivizing Specialists and Market Makers to transact a greater number of orders at the open by offering lower pricing would benefit all market participants through increased order interaction.

The Exchange's proposal to collect Payment for Order Flow Fees on transactions in Select Symbols, except when a Specialist or Market Maker is assessed the Simple Order Fee for Removing Liquidity is equitable and not unfairly discriminatory because the Exchange today collects assesses Specialists and Market Makers Payment for Order Flow Fees on all Multiply Listed Options except Select Symbols. The Exchange believes that not assessing Specialists and Market Makers Payment for Order Flow Fees when the Simple Order Fee for Removing Liquidity is assessed is equitable and not unfairly discriminatory because the Exchange does not desire to unfairly disadvantage Specialists and Market Makers by assessing them a $0.44 per contract Simple Order Fee for Removing Liquidity as well as a $0.25 per contract Payment for Order Flow fee. The Exchange believes that in this instance the fee would be much higher as compared to other market participants and does not proposes to assess the fee.

The Exchange's proposal to not assess PFOF on transactions which execute against an order for which the Exchange broadcast an order exposure alert in Penny Pilot Options is reasonable the Exchange believes that it would serve to incentivize Specialists and Market Makers to remove liquidity from the Phlx Book. The Exchange believes that the broadcast message, which alerts market participants to orders placed on the Phlx book combined with the opportunity to not be assessed PFOF in Penny Pilot Options would serve to incentivize participants to remove liquidity. The Exchange believes that all market participants would benefit from such an incentive which would lead to greater order interaction and may further reduce fees related to routing.

The Exchange's proposal to not assess PFOF on transactions which execute against an order for which the Exchange broadcast an order exposure alert in Penny Pilot Options is equitable and not unfairly discriminatory because the Exchange would not assess any Specialist or Market Maker such a PFOF fee regardless of whether or not that Specialist or Market Maker was aware of the alert at the time of execution.

Section IV Amendments

The Exchange's proposal to amend Section IV of the Pricing Schedule at Part A to decrease the Threshold Volume from 275,000 to 100,000 contracts per day in a month is reasonable because the lower Threshold Volume should allow a greater number of market participants to obtain the requisite volume to be assessed the lower $0.05 per contract fee. The Exchange's proposal to amend Section IV of the Pricing Schedule at Part A to decrease the Threshold Volume from 275,000 to 100,000 contracts per day in a month is equitable and not unfairly discriminatory because it would be uniformly assessed on all market participants.

In addition, the Exchange's proposal to permit Phlx members and member organizations under common ownership[43] to aggregate their Customer Rebate Program Threshold Volume in order to determine if they qualify for the $0.07 or $0.05 per contract Initiating Order fee is reasonable because the Exchange desires to provide all market participants the ability to obtain the lower Initiating Order Fee. The Exchange believes that its proposal to permit Phlx members and member organizations under common ownership to aggregate their Customer Rebate Program Threshold Volume for purposes of the Initiating Order fee is equitable and not unfairly discriminatory because the Exchange would permit all market participants the ability to aggregate for purposes of the fee even if certain members and member organizations chose to operate under separate entities. The Exchange currently permits such aggregation in the calculation of the Monthly Market Maker Cap.[44]

The Exchange's proposal to amend the PIXL pricing for order executions in Select Symbols by assessing a PIXL Order the Fee for Adding Liquidity in Section I and the Responder the $0.30 per contract fee unless the Responder is a Customer, in which case no fee is assessed, when a PIXL Order in a Select Symbol is contra to a PIXL Auction Responder is reasonable because the Exchange is proposing to only pay Rebates to Add Liquidity in Section I to Specialists and Market Makers in certain circumstances[45] and is not otherwise paying rebates except as proposed in Section A of the Pricing Schedule as part of the Customer Rebate Program. The Exchange does not desire to assess Customers fees and therefore is amending the PIXL pricing to not assess a fee if the Responder is contra to a Customer. The Exchange desires to incentivize market participants to send Customer order flow by offering the Customer Rebates in Section A and not assessing Customers fees in Section I of the Pricing Schedule. Customer order flow benefits all market participants by increased liquidity. In addition, the Exchange believes that the proposed amendments to Section IV would align the pricing with respect to Select Symbols to the amendments that are proposed herein in Section I, Parts A and B. The Exchange also believes that market participants would still be able to obtain rebates for PIXL orders

[42] The PFOF Program assists Specialists and Market Maker establish PFOF arrangements with an order flow provider in exchange for that order flow provider directing some or all of its order flow to that Specialist or Market Maker.

[43] Common ownership is defined as 75 percent common ownership or control.

[44] *See* Section II of the Pricing Schedule. Specialists and Market Makers are subject to a ''Monthly Market Maker Cap'' of $550,000 for: (i) Equity option transaction fees; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is at least 75% common ownership between the member organizations.

[45] The Rebate for Adding Liquidity will be paid to a Specialist or Market Maker only when the Specialist or Market Maker is contra to a Specialist, Market Maker, Firm, Broker-Dealer or Professional.

because the Exchange proposes to pay rebates on PIXL Orders in Section I symbols that execute against non-Initiating Order interest as part of proposed Category D of the Customer Rebate Program.

The Exchange's proposal to amend the PIXL pricing for order executions in Select Symbols by assessing the Fee for Removing Liquidity not to exceed $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 and assessing the resting order or quote the Fee for Adding Liquidity in Section I is reasonable because the Exchange has amended certain of its Fees for Removing Liquidity in Section I below $0.30 per contract and desires to assess the lower fee where applicable to market participants to further incentivize market participants to transact PIXL orders in Select Symbols. The Exchange's elimination of the Rebate to Add Liquidity with respect to PIXL Orders and the resting order or quote is reasonable because the Exchange is proposing to only pay Rebates to Add Liquidity in Section I to Specialists and Market Makers in certain circumstances [46] and is not otherwise paying rebates except as proposed in Section A of the Pricing Schedule.[47]

The Exchange's proposal to amend the PIXL Pricing by eliminating the Rebates to Add Liquidity in Select Symbols and assess the Fee for Removing Liquidity not to exceed $0.30 per contract is equitable and not unfairly discriminatory because the Exchange would uniformly apply the pricing to all market participants transacting PIXL orders. The Exchange's elimination of the Rebates for Adding Liquidity would impact Specialists and Market Makers because they are the only market participants entitled to rebates in certain circumstances in Section I. The Exchange believes this is equitable and not unfairly discriminatory because Specialists and Market Makers also benefit from being assessed the lower Fee for Removing Liquidity in Complex Orders as proposed herein, while other market participants are assessed $0.30 per contract. The Exchange assessed this lower fee because these market participants bear obligations not born by other market participants. The Exchange also believes that assessing the Fee for Removing Liquidity not to exceed $0.30 per contract specifically benefits Customers because they would not be assessed a fee pursuant to this proposal with respect to Simple Orders. Incentivizing Customer order flow benefits all market participants through increased liquidity.

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 operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore 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.

The Exchange believes that the Customer Rebate Program will encourage Customer order flow to be directed to the Exchange, which will benefit all market participants. The Exchange believes that not assessing Customers fees in Section I would also encourage market participants to direct Customer orders to the Exchange. The Exchange also believes that encouraging Specialists and Market Makers to remove liquidity from the book by incentivizing them with lower fees would benefit order interaction on the Exchange to the benefit of all market participants and therefore does not create a burden on competition. To the extent that the Exchange is increasing certain fees, those fees would permit the Exchange to offer the proposed Customer Rebate Program which benefits the market. Further, the fee increases impact all non-Customer members in a similar fashion and are comparable to fees assessed at other venues for transactions in similarly situated options. With respect to the Complex Order Fee for Removing Liquidity, the Exchange believes that the differential as between Specialists and Market Makers as compared to Firms, Broker-Dealers and Professionals must be considered in light of other fees which are applied to Specialists and Makers and are not assessed on Firms, Broker-Dealers and Professionals, such as the PFOF fee of $0.25 per contract. When this additional fee and other fees paid by Specialists and Market Makers are taken into consideration, the Exchange does not believe that the proposed increase to the Complex Order Fee for Removing Liquidity creates a burden on these market participants. Rather, the cost to transact orders for non-Customers become more closely aligned when the total costs is transacting a Complex Order is taken into account as Specialists and Market Makers are contra to a Customer in most cases. Additionally, a $0.25 per contract differential among non-Customers is not uncommon when competing for order flow. The Exchange notes that its floor fees for non-Customers in Multiply-Listed Options is $0.25 per contract, except for Firms which are not assessed a fee when facilitating a Customer order pursuant to Exchange Rule 1064. The Exchange believes that other pricing amendments impact all market participants alike as proposed. The Exchange believes that the proposed rule change will continue to promote competition on the Exchange.

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.[48] 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.

[46] The Rebate for Adding Liquidity will be paid to a Specialist or Market Maker only when the Specialist or Market Maker is contra to a Specialist, Market Maker, Firm, Broker-Dealer or Professional.

[47] Market participants would still be able to obtain rebates for PIXL orders because the Exchange proposes to pay rebates on PIXL Orders in Section I symbols that execute against non-Initiating Order interest as part of proposed Category D of the Customer Rebate Program.

[48] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2013–01 on the subject line.

Paper Comments

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

All submissions should refer to File Number *SR–Phlx–2013–01.* 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–2013–01 and should be submitted on or before February 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01226 Filed 1–22–13; 8:45 am]

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[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68653; File No. SR–CHX–2012–13]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Amendment No. 3, and Order Granting Accelerated Approval for Proposed Rule Change, as Modified by Amendment Nos. 1, 2 and 3, To Amend the Listing Rules for Compensation Committees To Comply With Securities Exchange Act Rule 10–C–1 and Make Other Related Changes

January 14, 2013.

I. Introduction

On September 26, 2012, Chicago Stock Exchange, Inc. (''Exchange'' or ''CHX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the Exchange's rules for compensation committees of listed issuers to comply with Rule 10C–1 under the Act and make other related changes. On October 10, 2012, CHX filed Amendment Nos. 1 and 2 to the proposed rule change.[3] The proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, was published for comment in the **Federal Register** on October 16, 2012.[4] The Commission subsequently extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to January 14, 2013.[5] The Commission received no comment letters on the proposal.[6] On January 7, 2013, the Exchange filed Amendment No. 3 to the proposed rule change.[7]

This order approves the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, on an accelerated basis.

II. Description of the Proposed Rule Change

A. Background: Rule 10C–1 under the Act

On March 30, 2011, to implement Section 10C of the Act, as added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''),[8] the Commission proposed Rule 10C–1 under the Act,[9] which directs each national securities exchange (hereinafter, ''exchange'') to prohibit the listing of any equity security of any issuer, with certain exceptions, that does not comply with the rule's requirements regarding compensation committees of listed issuers and related requirements regarding compensation advisers. On June 20, 2012, the Commission adopted Rule 10C–1.[10]

Rule 10C–1 requires, among other things, each exchange to adopt rules providing that each member of the compensation committee[11] of a listed issuer must be a member of the board of directors of the issuer, and must otherwise be independent.[12] In determining the independence standards for members of compensation committees of listed issuers, Rule 10C–

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 indicated that the proposal had been approved by CHX's board of directors on September 27, 2012. Amendment No. 2 replaced the original filing in full.

[4] *See* Securities Exchange Act Release No. 68033 (October 10, 2012), 77 FR 63370 (''Notice'').

[5] *See* Securities Exchange Act Release No. 68311 (November 28, 2012), 77 FR 71852 (December 4, 2012).

[6] The Commission notes that comments were received on substially similar proposals filed by New York Stock Exchange, LLC and The Nasdaq Stock Market LLC. For a discussion and summary of these comments *see* Securities Exchange Act Release Nos. 68011 (October 9, 2012) (''NYSE Notice) (File No. SR–NYSE–2012–49); 68013 (October 9, 2012) (''Nasdaq Notice'') (File No. SR–NASDAQ–2012–109); 68639 (January 11, 2013) (''NYSE Approval Order''); and 68640 (January 11, 2013) (''Nasdaq Approval Order'').

[7] In Amendment No. 3 to SR–CHX–2012–013, CHX: (a) Removed a proposed amendment to Rule 4 concerning delisting standards, *see infra* notes 21–22 and accompanying text; (b) added commentary to state that the independence assessment of compensation advisers required of compensation committees does not need to be conducted for in-house counsel and advisers whose roles are limited to those entitled to an exception from the adviser disclosure rules under Item 407(e)(3)(iii) of Regulation S–K, *see infra* notes 53–55 and accompanying text; and (c) added commentary to state that the independence assessment of compensation advisers required of compensation committees does not require the adviser to be independent, only that the compensation committee consider the enumerated factors before selecting or receiving advise from the adviser; *see infra* notes 56–58 and accompanying text; (d) removed a proposed exemption from the rule; and (e) reincorporated existing Rules 19(d) and 19(p)(3) as ''sunset provisions'' with text that would be effective until July 1, 2013, rather than delete them in their entirety and otherwise modified the transition schedule for currently listed companies with provisions of the proposed rule. *See infra* notes 72–74 and accompanying text.

[8] Public Law 111–203, 124 Stat. 1900 (2010).

[9] *See* Securities Act Release No. 9199, Securities Exchange Act Release No. 64149 (March 30, 2011), 76 FR 18966 (April 6, 2011) (''Rule 10C–1 Proposing Release'').

[10] *See* Securities Act Release No. 9330, Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422 (June 27, 2012) (''Rule 10C–1 Adopting Release'').

[11] For a definition of the term ''compensation committee'' for purposes of Rule 10C–1, *see* Rule 10C–1(c)(2)(i)–(iii).

[12] *See* Rule 10C–1(a) and (b)(1).