Proposed Rule Change by Philadelphia Stock Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial Amendment Withdrawal
✓     ❑     ❑

Section 19(b)(2) Section 19(b)(3)(A) Section 19(b)(3)(B)
❑     ❑     ❑

Rule
❑ 19b-4(f)(1) ❑ 19b-4(f)(4)
❑ 19b-4(f)(2) ❑ 19b-4(f)(5)
❑ 19b-4(f)(3) ❑ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document Exhibit 3 Sent As Paper Document
❑         ❑

Description
Provide a brief description of the proposed rule change (limit 250 characters).

Exchange Covered Sale Fee and amending Exchange Rule 607

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Cynthia
Last Name Hoekstra

Title Director

E-mail cynthia.hoekstra@phlx.com

Telephone (215) 496-5066 Fax (215) 496-6729

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 12/22/2005

By Cynthia Hoekstra

(Name) Director

(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.
## Form 19b-4 Information

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

### Exhibit 1 - Notice of Proposed Rule Change

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3).

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

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

### Exhibit 3 - Form, Report, or Questionnaire

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

### Exhibit 4 - Marked Copies

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

### Exhibit 5 - Proposed Rule Text

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

### Partial Amendment

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission’s permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.
1. **Text of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\) and Rule 19b-4 thereunder,\(^2\) proposes to change the title from the “SEC Fee” to “Covered Sale Fee” as it appears on the Exchange’s Summary of Equity Charges and the Nasdaq-100 Index Tracking Stock\(^{SM}\) Fee Schedule.\(^3\) The Exchange also proposes to amend Exchange Rule 607, Transaction Fee, to more completely describe the Covered Sale Fee, including renaming the title of Rule 607 to “Covered Sale Fee” and providing a more complete description of a new arrangement for passing fees among Intermarket Trading System ("ITS") participants. The proposed changes to Rule 607 are noted below:

New Text Underlined; Deleted Text Bracketed

Rule 607.

[Transaction] Covered Sale Fee

Under Section 31 of the Securities Exchange Act of 1934, the Exchange must pay certain fees to the Securities and Exchange Commission ("Commission"). To help fund the Exchange's obligations to the Commission under Section 31, a Covered Sale Fee is assessed by the Exchange to members and member organizations. To the extent there may be any excess monies collected under this Rule, the Exchange may retain those


\(^3\) The Nasdaq-100®️, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares\(^{SM}\), Nasdaq-100 Trust\(^{SM}\), Nasdaq-100 Index Tracking Stock\(^{SM}\), and QQQ\(^{SM}\) are trademarks or service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index®️ (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust\(^{SM}\), or the beneficial owners of Nasdaq-100 Shares\(^{SM}\). Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.
monies to help fund its general operating expenses. [Every member and member organization shall pay to the Exchange in such manner and at such time as the Exchange shall direct, the fees specified in Section 31 of the Securities Exchange Act of 1934, and rules thereunder, for all sales upon the Exchange of securities specified in Section 31 of the Securities Exchange Act of 1934, and rules thereunder.]

Each member and member organization engaged in executing transactions on the Exchange or executing transactions, which were routed over the Intermarket Trading System, on another exchange during any computational period shall pay a Covered Sale Fee equal to (i) the Section 31 fee rate multiplied by (ii) the member’s aggregate dollar amount of covered sales occurring on the Exchange.

The Exchange may enter into arrangements with other exchanges to pass the Covered Sale Fee among the applicable exchanges where the Exchange has collected the Covered Sale Fee from its members and member organizations for sale transactions executed on another exchange through the Intermarket Trading System and when other exchanges have collected the Covered Sale Fee from its members for sale transactions executed on the Exchange through the Intermarket Trading System.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of the applicable sections of the Exchange’s Summary of Equity Charges and Nasdaq-100 Index Tracking Stocksm Fee Schedule is attached hereto as Exhibit 5.

2. Procedures of the Self-Regulatory Organization

The Executive Committee, pursuant to delegated authority, approved the proposal for filing with the Securities and Exchange Commission (“Commission”) on October 26, 2005.

Questions and comments on the proposed rule change may be directed to Cynthia Hoekstra, Director, at (215) 496-5066 or Edith Hallahan, Deputy General Director, at (215) 496-5179.
3. **Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

   a. **Purpose**

   The purpose of changing the name of the SEC Fee as it appears on the Exchange’s fee schedule and in Exchange Rule 607 is to conform with the Commission’s request to rename this fee to help clarify that members and member organizations do not incur an obligation to the Commission under Section 31 of the Act and to help minimize confusion in connection with the Exchange’s assessment of the fee. In addition, the amendments to Rule 607 reflect the new arrangements with respect to the passing of Section 31 fees among ITS participants that the participating SROs have collected from their respective members for transactions executed on another SRO through ITS.

   **Background**

   In late June 2004, the Commission established new procedures governing the calculation, payment, and collection of fees and assessments on securities transactions owed by national securities exchanges and national securities associations (collectively “SROs”) to the Commission pursuant to Section 31 of the Act. In connection with these new procedures, the Commission expressed its concern about the manner in which SROs labeled the fees that they passed to their members and the manner in which members labeled the fees passed to their customers. Because Section 31 does not place an obligation on members of covered SROs or their customers, the Commission stated its belief that it is misleading to suggest that a customer or an SRO member incurred an obligation to the Commission under Section 31. Accordingly, the Commission requested

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that SROs take action to correct any such misperception, which would include changing
the title of the “SEC Fee” as it appears on the Exchange’s fee schedule.

Thus, in order to comply with the Commission’s request and to minimize any
confusion relating to the assessment of the fee, the Exchange proposes to rename its
“SEC Fee” and Exchange Rule 607 “Transaction Fee” to “Covered Sale Fee.”

**ITS Collection**

In addition, the Exchange recently filed with, and received an order granting
accelerated approval from, the Commission to establish certain fees with respect to
transactions executed through the ITS. Participating SROs intend to enter into
arrangements to pass Section 31 fees among ITS participants that the participating SROs
have collected from their respective members for sale transactions executed on another
participating SRO through ITS. Pursuant to this new arrangement, each ITS participant
will determine whether it has received and executed more in dollar value of covered sales
than it has originated and sent to each other ITS participant. One participating SRO will
then deduct the amount it owes another participating SRO and will invoice only for the

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5 Pursuant to Rule 31 of the Act, a covered sale is a sale of a security, other than an
exempt sale or a sale of a security future, occurring on a national securities exchange or
by or through any member of a national securities association otherwise than on a
national securities exchange.


7 For example, for the period September 2003 through August 2004, SRO A sent ITS
commitments for covered sales whose dollar value was $150 million to SRO B for
execution. SRO A collected fees from its members to fund its Section 31 obligation for
those covered sales executed on SRO B. Under the new procedures established by the
Commission for the calculation and collection of Section 31 fees on such covered sales,
SRO B, as the executing market center, is obligated to pay the Section 31 fee to the
Commission.
difference; however, the duty to report and pay the Section 31 fee will remain with the
ITS participant SRO on which the sale was in fact transacted. It is anticipated that the
invoicing process will occur twice yearly to coincide with the March 15 and September
30 payment schedule for Section 31 fees set forth in the Act.

NSCC Collection and Computational Period

The Exchange intends to have the National Securities Clearing Corporation
(“NSCC”) collect this fee (and other Exchange fees) for the Exchange for certain
members and member organizations and pay over to the Exchange the funds collected in
connection with equity securities, which should increase the efficiency in which this fee,
as well as other Exchange fees, are collected.8

The computational period, referred to in proposed Rule 607 above, may change
during the course of a year if there is a change in the Section 31 fee rate.9 Thus, the
amount of the Section 31 fee may change during the year, which would, in turn, start a

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8 Currently, NSCC collects the fee on the 23rd calendar day of each month, provided that
if such day is other than an NSCC business/settlement day, on the next succeeding NSCC
business/settlement day. The Exchange implemented this collection practice in
November 2005, which covered transactions that occurred in October 2005. For equity
transactions, the NSCC debits the Phlx member’s or member organization’s clearing
firm. If an Exchange member clears through the Stock Clearing Corporation of
Philadelphia (“SCCP”), a Phlx subsidiary, the Exchange will debit the member’s or
member organizations’ margin account at SCCP. The Options Clearing Corporation
(“OCC”) will continue to bill and collect this fee in connection with covered sales of
options. Currently, OCC and the options exchanges, including Phlx, have established
arrangements whereby OCC tabulates the aggregate amount of sales of options that occur
on the exchanges, based on data captured by OCC’s systems. OCC then calculates the
Section 31 fees owed by the exchanges and, in turn, remits to the Commission the
Section 31 assessments on behalf of these exchanges.

9 The Commission is required to adjust the securities transaction fee rates on an annual
basis, after consultation with the Congressional Budget Office and the Office of
Management and Budget. The Commission may also be required to make a “mid-year”
adjustment to the Section 31 fee rate.
new computational period. The Exchange determines whether a trade “occurs” before or after a fee rate change so that the appropriate dollar amounts of securities sales are multiplied by the correct fee rate.

b. **Statutory Basis**

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act\(^{10}\) in general, and furthers the objectives of Section 6(b)(4) of the Act\(^{11}\) in particular, in that it is an equitable allocation of reasonable fees among Exchange members and issuers and other persons using its facilities.

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

The Phlx 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.

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

No written comments were either solicited or received.

6. **Extension of Time Period for Commission Action**

The Exchange does not consent to an extension of the time period for Commission action.

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

The Exchange is requesting accelerated effectiveness to make Exchange Rule 607

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\(^{10}\) 15 U.S.C. 78f(b).

consistent as quickly as possible with the Commission’s guidance on Section 31 of the Act.

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

The proposed rule change is similar to proposed rule changes filed by the New York Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the National Stock Exchange and the Boston Stock Exchange, Inc.\(^\text{12}\)

9. **Exhibits**

1. Notice of proposed rule for publication in the Federal Register.

5. Applicable sections of the Exchange’s Summary of Equity Charges and Nasdaq-100 Index Tracking Stock\(^\text{sm}\) Fee Schedule.

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-Phlx-2005-87)

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Exchange’s Covered Sale Fee and Rule 607

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 _________________ 2005, the Philadelphia Stock Exchange, Inc. ("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 Phlx. 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 Phlx, pursuant to Section 19(b)(1) and Rule 19b-4 thereunder,\(^3\) proposes to change the title from the “SEC Fee” to “Covered Sale Fee” as it appears on the Exchange’s Summary of Equity Charges and the Nasdaq-100 Index Tracking Stock\(^4\) Fee Schedule.\(^4\) The Exchange also proposes to amend Exchange Rule 607, Transaction

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\(^3\) 17 CFR 240.19b-4

\(^4\) The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares\(^SM\), Nasdaq-100 Trust\(^SM\), Nasdaq-100 Index Tracking Stock\(^SM\), and QQQ\(^SM\) are trademarks or service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange.
Fee, to more completely describe the Covered Sale Fee, including renaming the title of Rule 607 to “Covered Sale Fee” and providing a more complete description of a new arrangement for passing fees among Intermarket Trading System (“ITS”) participants.

The proposed changes to Rule 607 are noted below:

New Text Underlined; Deleted Text Bracketed

Rule 607.

[Transaction] Covered Sale Fee

Under Section 31 of the Securities Exchange Act of 1934, the Exchange must pay certain fees to the Securities and Exchange Commission ("Commission"). To help fund the Exchange's obligations to the Commission under Section 31, a Covered Sale Fee is assessed by the Exchange to members and member organizations. To the extent there may be any excess monies collected under this Rule, the Exchange may retain those monies to help fund its general operating expenses. [Every member and member organization shall pay to the Exchange in such manner and at such time as the Exchange shall direct, the fees specified in Section 31 of the Securities Exchange Act of 1934, and rules thereunder, for all sales upon the Exchange of securities specified in Section 31 of the Securities Exchange Act of 1934, and rules thereunder.]

Each member and member organization engaged in executing transactions on the Exchange or executing transactions, which were routed over the Intermarket Trading System, on another exchange during any computational period shall pay a Covered Sale Fee equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales occurring on the Exchange.

The Exchange may enter into arrangements with other exchanges to pass the Covered Sale Fee among the applicable exchanges where the Exchange has collected the Covered Sale Fee from its members and member organizations for sale transactions executed on another exchange through the Intermarket Trading System and when other exchanges have collected the Covered Sale Fee from its members for sale transactions executed on the Exchange through the Intermarket Trading System.

pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.
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 Phlx 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 Phlx 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 changing the name of the SEC Fee as it appears on the Exchange’s fee schedule and in Exchange Rule 607 is to conform with the Commission’s request to rename this fee to help clarify that members and member organizations do not incur an obligation to the Commission under Section 31 of the Act and to help minimize confusion in connection with the Exchange’s assessment of the fee. In addition, the amendments to Rule 607 reflect the new arrangements with respect to the passing of Section 31 fees among ITS participants that the participating SROs have collected from their respective members for transactions executed on another SRO through ITS.

Background

In late June 2004, the Commission established new procedures governing the calculation, payment, and collection of fees and assessments on securities transactions owed by national securities exchanges and national securities associations (collectively
“SROs”) to the Commission pursuant to Section 31 of the Act.\(^5\) In connection with these new procedures, the Commission expressed its concern about the manner in which SROs labeled the fees that they passed to their members and the manner in which members labeled the fees passed to their customers. Because Section 31 does not place an obligation on members of covered SROs or their customers, the Commission stated its belief that it is misleading to suggest that a customer or an SRO member incurred an obligation to the Commission under Section 31. Accordingly, the Commission requested that SROs take action to correct any such misperception, which would include changing the title of the “SEC Fee” as it appears on the Exchange’s fee schedule.

Thus, in order to comply with the Commission’s request and to minimize any confusion relating to the assessment of the fee, the Exchange proposes to rename its “SEC Fee” and Exchange Rule 607 “Transaction Fee” to “Covered Sale Fee.”\(^6\)

**ITS Collection**

In addition, the Exchange recently filed with, and received an order granting accelerated approval from, the Commission to establish certain fees with respect to transactions executed through the ITS.\(^7\) Participating SROs intend to enter into arrangements to pass Section 31 fees among ITS participants that the participating SROs

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\(^6\) Pursuant to Rule 31 of the Act, a covered sale is a sale of a security, other than an exempt sale or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange.

have collected from their respective members for sale transactions executed on another participating SRO through ITS. Pursuant to this new arrangement, each ITS participant will determine whether it has received and executed more in dollar value of covered sales than it has originated and sent to each other ITS participant. 8 One participating SRO will then deduct the amount it owes another participating SRO and will invoice only for the difference; however, the duty to report and pay the Section 31 fee will remain with the ITS participant SRO on which the sale was in fact transacted. It is anticipated that the invoicing process will occur twice yearly to coincide with the March 15 and September 30 payment schedule for Section 31 fees set forth in the Act.

NSCC Collection and Computational Period

The Exchange intends to have the National Securities Clearing Corporation (“NSCC”) collect this fee (and other Exchange fees) for the Exchange for certain members and member organizations and pay over to the Exchange the funds collected in connection with equity securities, which should increase the efficiency in which this fee, as well as other Exchange fees, are collected. 9

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8 For example, for the period September 2003 through August 2004, SRO A sent ITS commitments for covered sales whose dollar value was $150 million to SRO B for execution. SRO A collected fees from its members to fund its Section 31 obligation for those covered sales executed on SRO B. Under the new procedures established by the Commission for the calculation and collection of Section 31 fees on such covered sales, SRO B, as the executing market center, is obligated to pay the Section 31 fee to the Commission.

9 Currently, NSCC collects the fee on the 23rd calendar day of each month, provided that if such day is other than an NSCC business/settlement day, on the next succeeding NSCC business/settlement day. The Exchange implemented this collection practice in November 2005, which covered transactions that occurred in October 2005. For equity transactions, the NSCC debits the Phlx member’s or member organization’s clearing firm. If an Exchange member clears through the Stock Clearing Corporation of Philadelphia (“SCCP”), a Phlx subsidiary, the Exchange will debit the member’s or
The computational period, referred to in proposed Rule 607 above, may change during the course of a year if there is a change in the Section 31 fee rate.\textsuperscript{10} Thus, the amount of the Section 31 fee may change during the year, which would, in turn, start a new computational period. The Exchange determines whether a trade “occurs” before or after a fee rate change so that the appropriate dollar amounts of securities sales are multiplied by the correct fee rate.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act\textsuperscript{11} in general, and furthers the objectives of Section 6(b)(4) of the Act\textsuperscript{12} in particular, in that it is an equitable allocation of reasonable fees among Exchange members and issuers and other persons using its facilities.

\textsuperscript{10} The Commission is required to adjust the securities transaction fee rates on an annual basis, after consultation with the Congressional Budget Office and the Office of Management and Budget. The Commission may also be required to make a “mid-year” adjustment to the Section 31 fee rate.

\textsuperscript{11} 15 U.S.C. 78f(b).

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.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission shall: (a) by order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved. The Exchange is requesting accelerated effectiveness to make Exchange Rule 607 consistent as quickly as possible with the Commission’s guidance on Section 31 of the Act.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission’s Internet comment form

  (http://www.sec.gov/rules/sro.shtml); or
• Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2005-87 on the subject line.

Paper comments:

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2005-87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. 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-2005-87 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. ¹³

Margaret H. McFarland
Deputy Secretary

Exhibit 5

New text underlined; deleted text bracketed

SUMMARY OF EQUITY CHARGES (p 2/3)*

[SEC FEE] Covered Sale Fee

The amount shall be determined by Section 31 of the Securities Exchange Act of 1934.

OFF-EXCHANGE TRADE INFORMATION FEE

$.10 per DOT trade

REMOTE INFORMATION ACCESS FEE

$300.00 per month

ELECTRONIC COMMUNICATIONS NETWORKE (“ECN”) FEE

$2,500.00 per month (in lieu of equity transaction charges)

See Appendix A for additional fees.

* not applicable to transactions in Nasdaq-100 Index Tracking StockSM (see page 4 for fees).
### PHLX FEE SCHEDULE

**Customer**

<table>
<thead>
<tr>
<th>Type</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>PACE</td>
<td>none&lt;sup&gt;1&lt;/sup&gt;</td>
</tr>
<tr>
<td>Non-PACE</td>
<td>Transaction Fee: $.0035 per share</td>
</tr>
</tbody>
</table>

$50 maximum fee per trade side.

**EQUITY FLOOR BROKERAGE ASSESSMENT**

$250 monthly charge<sup>2</sup>

**REMOTE INFORMATION ACCESS FEE**

$300.00 per month

**[SEC FEE] Covered Sale Fee**

The amount shall be determined by Section 31 of the Securities Exchange Act of 1934.

### SCCP FEE SCHEDULE

**Customer**

- $0.30 per trade (Non-PACE customers)

**Specialist**

- $0.50 per trade – for the first 1,000 trades
- $0.25 per trade – for all subsequent trades (no further volume discounts)

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The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares<sup>SM</sup>, Nasdaq-100 Trust<sup>SM</sup>, Nasdaq-100 Index Tracking Stock<sup>SM</sup> and QQQ<sup>SM</sup> are trademarks or service marks of The Nasdaq Stock Market, Inc. (*Nasdaq*) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the *Index*) is determined, composed and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust<sup>SM</sup>, or the beneficial owners of Nasdaq-100 Shares<sup>SM</sup>. Nasdaq has complete control and sole discretion in determining, comprising or calculating the Index or in modifying in any way its method for determining, comprising or calculating the Index in the future.

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<sup>1</sup> However, this charge applies where an order, after being delivered to the Exchange by the PACE system is executed by the specialist by way of an outbound ITS commitment, when such outbound ITS commitment reflects the PACE order’s clearing information, but does not apply where a PACE trade was executed against an inbound ITS commitment.

<sup>2</sup> Applies to each member who derives at least 80% of gross income generated from Phlx floor based activities from his/her brokerage business conducted on the equity floor of the Exchange. Floor brokerage business conducted on the Exchange includes orders that are received on the equity floor of the Phlx, even if those orders are executed on an exchange other than the Phlx.