

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69500; File No. SR-Phlx-2013-43)

May 2, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Waive the Application and Initiation Fees in Certain Circumstances

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on April 24, 2013, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Exchange’s Pricing Schedule to waive the Application and Initiation Fees, for a defined period of time, in order that certain market making firms may comply with new requirements imposed by the Exchange at no additional cost.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqomxphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange recently amended various Exchange Rules to establish that member organizations may qualify to be Remote Streaming Quote Traders³ with as many as three affiliated RSQTs.⁴ RSQTs are, along with Specialists,⁵ one of several types of Registered Option Traders (“ROT”)⁶ on the Exchange. SR-Phlx-2013-03 amended Rules 507 and 1014 to define a Remote Streaming Quote Trader Organization or (“RSQTO”) and a Remote Market

³ A Remote Streaming Quote Trader (“RSQT”) is defined in Exchange Rule 1014(b)(ii)(B) as an Registered Options Trader that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

⁴ See Securities Exchange Act Release No. 68689 (January 18, 2013), 78 FR 5518 (January 25, 2013) (SR-Phlx-2013-03) (a rule change which amended Phlx Rules 507 and 1014 to enable RSQT Organizations to affiliate with up to three RSQTS).

⁵ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁶ A ROT includes a Streaming Quote Trader (“SQT”), a RSQT and a Non-SQT, which by definition is neither a SQT nor a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii). Rule 1014 states that, in addition to other requirements, on a daily basis RSQTs and other SQTs are responsible to quote two-sided markets in not less than a specified percentage of options assigned by the Exchange at the request of such traders, unless specifically exempted from such quoting (market-making) responsibility.

Maker Organizations (“RMOs”).⁷ In addition RSQTs may also be referred to as Remote Market Markers (“RMMs”).⁸ Amended Rule 507(a) provides that “...[a]s many as three RSQTs at any time may be identified by and affiliated with an RSQTO. Each of the affiliated RSQTs must be qualified as an ROT and must be in good standing.”⁹ Further, the rule change requires that “[u]pon approval of the proposal...each member organization operating as an RSQT pursuant this rule will: (a) be deemed an RSQTO, and b) within 21 days notify the Exchange of no more three RSQTs affiliated with the RSQTO (the “Conversion Period”).”¹⁰

Phlx member organizations are required to have one associated person designated as their qualifying permit holder in order for the firm to be eligible for membership.¹¹ Further, “[a]ny Series A-1 permit holder who is associated with a duly qualified and registered member organization (unless such holder's permit has been terminated or the rights and privileges thereof have been suspended or restricted) shall, subject to the By-Laws (including, without limitation, Section 6-1 thereof) and these Rules, be:...(ii) required to designate a single existing or applying

⁷ See Exchange Rule 507(a) and 1014(b)(ii)(B). See Securities Exchange Act Release No. 68689 (January 18, 2013), 78 FR 5518 (January 25, 2013) (SR-Phlx-2013-03). This filing became effective on April 19, 2013.

⁸ See Rule 507(a).

⁹ Id.

¹⁰ See Rule 507(a). See also Options Trader Alert (“OTA”) #2013-21 dated April 22, 2013 which provided additional notice to RSQTOs of their obligation to notify the Exchange of affiliated RMMs during the Conversion Period.

¹¹ See Exchange Rule 908 entitled “Rights and Privileges of A-1 Permits.” Specifically, “[a] Series A-1 permit shall only be issued to an individual who is a natural person of at least twenty-one (21) years of age. A Series A-1 permit shall only be issued to a corporation who meets the eligibility and application requirements set forth in the By-Laws and Rules, including, without limitation, Rule 972, and no individual shall hold more than a single Series A-1 permit. Series A-1 permits issued in accordance with this Rule 908 shall be in such limited or unlimited number and may be issued from time to time by the Exchange, in each case as determined by the Board of Directors in its sole discretion.” See Rule 908(b).

member organization as such permit holder's "primarily affiliated" member organization for the purpose of exercising (through such member organization's designated Member Organization Representative) such permit holder's right to vote, as set forth in Article II of the By-Laws, provided that, if such holder designates any applying member organization, such holder will then also qualify such applying member organization for the purposes of Rule 921(a); and (iii) required to maintain a primary affiliation, as described in the foregoing clause (ii), with an eligible member organization at all times that such holder holds a permit.

In light of SR-Phlx-2013-03, the Exchange now requires that each RSQTO have a minimum of one affiliated RMM (an RSQT) to qualify the RSQTO. The RSQTO may have up to a maximum of three affiliated RMMS under the amended rules. The Exchange anticipates that during the Conversion Period certain RSQTOs will need to transfer their existing permit to an RMM, by filing an Individual Member Application with the Exchange for the RMM pursuant to Rule 900.2, in order to comply with the new requirements. Today, all new member applicants are assessed an Application Fee of \$350.00 and an Initiation Fee of \$1,500. Under the current Pricing Schedule, an RMM would be assessed these fees as a new Phlx member.

The Exchange desires to assist RSQTOs in complying with the requirements of Rule 507(a) during the Conversion Period without incurring additional costs. The Exchange, therefore, proposes to waive both the Application and Initiation Fees for existing RSQTOs desiring to file an application to transfer their existing permits to a new RMM during the Conversion Period. The Exchange will only waive the Application and Initiation Fees for RSQTOs to qualify up to one RMM, provided the existing qualifier is not an RMM today. If an RSQTO desires to qualify up to the maximum number of three RMMS, only the first application involving the transfer of the existing permit to a new RMM will receive the waiver of the

Application and Initiation Fees, the other two RMMs would be assessed the Application and Initiation Fees. In addition, new RSQTOs would be assessed the Application and Initiation Fees, the waiver would only apply to existing RSQTOs.

The waiver period will be from April 24, 2013 to May 13, 2013.¹² The Exchange is proposing to add rule text to the Pricing Schedule to note the waiver period.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁴ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposal is reasonable because the Exchange is seeking to lower costs for RSQTOs that are impacted by the recent amendment to Rules 507 and 1014. The Exchange does not desire to increase costs for RSQTOs attempting to comply with the new requirements of Rule 507(a) during the Conversion Period. The Exchange also believes that the proposal is equitable and not unfairly discriminatory because the Exchange is uniformly applying the waiver to all RSQTOs impacted by the proposal who are current members of the Exchange. All other market participants would not be affected by the rule change as it applies specifically to remote market makers. Further, new RSQTOs to the Exchange should pay Application and Initiation Fees similar to current RSQTOs that incurred those fees at the time of application.

¹² Pursuant to SR-Phlx-2013-03, the Conversion Period starts at the later of the approval of SR-Phlx-2013-03, which was on April 19, 2013, or the issuance of an OTA by the Exchange, which was on April 22, 2013, and ends 21 days later.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

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 is waiving the fees associated with complying with Rule 507(a) during the Conversion Period for RSQTOs that would be impacted and incur fees not borne by other Exchange members. The Exchange does not believe that the waiver creates an undue burden on competition, rather the waiver attempts to equalize the treatment of its members in not imposing higher costs on market making firms.

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. Accordingly, the fees that are assessed are influenced by 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.

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.¹⁵ 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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2013-43 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-2013-43. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2013-43 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).