

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70371; File No. SR-Phlx-2013-90)

September 11, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on August 29, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a 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 with respect to certain pricing in Section II entitled "Multiply Listed Options Fees".³ While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated that they become operative on September 3, 2013.

The text of the proposed rule change is also 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The pricing in Section II includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange’s Pricing Schedule with respect to certain pricing in Section II entitled “Multiply Listed Options Fees” by eliminating a certain fee and rebate for certain floor transactions.

Specifically, the Exchange proposes to eliminate certain pricing, established on May 1, 2013,⁴ for Specialists⁵ and Market Makers⁶ that are contra to a Customer order in Penny Pilot Options on Exchange Traded-Fund (“ETFs”)⁷ on the Exchange’s floor by eliminating the \$0.25 per contract fee that is in addition to the Floor Options Transaction Charges in Section II of the

⁴ See Securities Exchange Act Release No. 69548 (May 9, 2013) 78 FR 28681 (May 15, 2013) (SR- PHLX-2013-49).

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

⁶ 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.

⁷ An ETF is an open-ended registered investment company under the Investment Company Act of 1940 that has received certain exemptive relief from the Commission to allow secondary market trading in the ETF shares. ETFs are generally index-based products, in that each ETF holds a portfolio of securities that is intended to provide investment results that, before fees and expenses, generally correspond to the price and yield performance of the underlying benchmark index.

Pricing Schedule.⁸ Additionally, the contra Customer order to the Specialist and Market Maker transaction, established on May 1, 2013,⁹ no longer will be entitled to a rebate of \$0.25 per contract. The Exchange believes that the existing pricing structure did not provide any material benefit to Specialists, Market Makers, Customers or to the Exchange and that this new pricing will not impact trading in Penny Pilot Options on ETFs on the Exchange's trading floor.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ 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 it is reasonable to eliminate certain pricing for Specialists and Market Makers that are contra to a Customer Penny Pilot Options on ETFs transacted on the Exchange's floor by eliminating the \$0.25 per contract fee that is in addition to the Options Transaction Charges¹² in Section II of the Pricing Schedule is reasonable because the Exchange has determined that the fee did not encourage more orders in Penny Pilot Options on ETFs to be delivered and executed on the Exchange's trading floor and did not provide any material additional opportunity for floor participants to interact with that order. The Exchange also

⁸ Specialists and Market Makers are assessed a Floor Options Transaction Charge of \$0.25 per contract. See Section II of the Pricing Schedule.

⁹ See supra note 4.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² Specialists and Market Makers are assessed an Options Transaction Charge of \$0.25 per contract for transacting floor trading ETFs in Penny Pilot Options. See Section II of the Pricing Schedule. The Exchange does not assess Payment for Order Flow fees for floor transactions. See Section II of the Pricing Schedule.

proposes to eliminate this since the Exchange also seeks to eliminate the rebate to the Customer on the contra-side of a Specialist and Market Maker floor transaction in a Penny Pilot Option on an ETF. The Exchange determined that paying a rebate of \$0.25 per contract to Customers on the contra-side of a Specialist and Market Maker Penny Pilot Options on an ETF order did not encourage market participants to send Customer Penny Pilot Options on ETFs to the Exchange's floor for execution to qualify for the rebate when they are contra to a Specialist or Market Maker order.

The Exchange's proposal to eliminate certain pricing for Specialists and Market Makers that are contra to a Customer Penny Pilot Options on ETFs transacted on the Exchange's trading floor by eliminating the \$0.25 per contract in addition to the Options Transaction Charges¹³ in Section II of the Pricing Schedule is equitable and not unfairly discriminatory because it applies to all Specialists and Market Makers equally and uniformly.

The Exchange's proposal to eliminate the \$0.25 per contract rebate to a Customer that is contra to a Specialist or Market Maker order in a Penny Pilot Options on an ETF transacted on the Exchange's trading floor is reasonable because although Customer order flow is unique and such order flow may attract liquidity to the market to the benefit of all market participants, the rebate at hand did not attract additional liquidity and thus no additional benefit to market participants. The Exchange will uniformly eliminate for all Customers the \$0.25 per contract rebate for orders that are contra to a Specialist or Market Maker order in Penny Pilot Options on ETFs transacted on the Exchange's trading floor so it is equitable and not unfairly discriminatory because it applies to all Customers.

¹³ Specialists and Market Makers are assessed an Options Transaction Charge of \$0.25 per contract for transacting Floor ETFs in Penny Pilot Options. See Section II of the Pricing Schedule. The Exchange does not assess Payment for Order Flow fees for floor transactions. See Section II of the Pricing Schedule.

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

The does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes these pricing amendments do not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange and position the Exchange as an attractive alternative when compared to other options exchanges.

The Exchange operates in a highly competitive market, comprised of eleven [sic] 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.

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

Written comments were neither solicited nor 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.¹⁴ 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

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2013-90 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-2013-90. 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 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-2013-90 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).