

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70850; File No. SR-Phlx-2013-109)

November 12, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Box Spread Strategies

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 October 30, 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.

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

The Exchange proposes to adopt a strategy fee cap applicable to box spreads.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on November 1, 2013.

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 purpose of this filing is to amend the strategy fee caps which are currently located in Section II, entitled "Multiply Listed Options."³ Today, the Exchange caps fees on certain dividend, merger, short stock interest, reversal and conversion and jelly roll strategy floor option transactions. The Exchange is proposing to also cap fees on box spread strategy transactions.

A box spread strategy synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively. The Exchange proposes to include this definition in Section II of the Pricing Schedule in the section entitled "Strategies Defined."

The Exchange proposes to offer a strategy cap for box spreads. Today, Specialist,⁴ Market Maker,⁵ Professional,⁶ Firm⁷ and Broker-Dealer⁸ floor option transaction charges in

³ This includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed

⁴ A "Specialist" is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁵ 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.

⁶ 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).

Multiply Listed Options are capped at \$1,250 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts, and option transaction charges in Multiply Listed Options are capped at \$700 for reversal and conversion and jelly roll strategies executed on the same trading day in the same options class. Floor option transaction charges in Multiply Listed Options for dividend, merger, short stock interest, reversal and conversion and jelly roll strategies combined are further capped at \$35,000 per member organization, per month when such members are trading in their own proprietary accounts (“Monthly Strategy Cap”). Reversal and conversion and jelly roll strategy executions are not included in the Monthly Strategy Cap for a Firm. Further, to qualify for a strategy fee cap, the buy and sell side of a transaction must originate from the Exchange floor.

The Exchange proposes to cap Specialist, Market Maker, Professional, Firm and Broker-Dealer floor option transaction charges in Multiply Listed Options at \$700 for box spread strategies executed on the same trading day in the same options class. Further, the Exchange will include box spreads in the Monthly Strategy Cap so that floor option transaction charges in Multiply Listed Options for dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategies combined will continue to be capped at \$35,000 per member organization, per month when such members are trading in their own proprietary accounts for purposes of the Monthly Strategy Cap, except for a Firm. Similar to reversal and conversion and jelly roll strategy executions, box spreads will not be included in the Monthly Strategy Cap for a Firm. The Exchange proposes to note for purposes of clarity in the Pricing Schedule that, as is

⁷ The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

⁸ The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

the case today for reversal and conversion and jell roll strategy executions, box spreads are included in the Monthly Firm Fee Cap.⁹ The Exchange proposes to amend the text of the Pricing Schedule describing the applicability of the Monthly Market Maker Cap¹⁰ and the Monthly Firm Fee Cap to clarify how box spread strategies will be included or excluded from these caps as defined herein. For purposes of clarity, the Exchange proposes to note in the Pricing Schedule that all strategy executions are excluded from the Monthly Market Maker Cap.

In order to receive the applicable strategy caps today, members are required to designate on the trade ticket whether the trade involves a dividend, merger, short stock interest, reversal and conversion or jelly roll strategy by entering the proper code on the trading ticket¹¹ and into the system, or directly into the Floor Broker Management System¹² (“FBMS”).¹³ In the

⁹ Firms are subject to a maximum fee of \$75,000 (“Monthly Firm Fee Cap”). Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in this Section II) are excluded from the Monthly Firm Fee Cap. Reversal and conversion strategy executions (as defined in this Section II) are included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

¹⁰ Specialists and Market Makers are subject to a “Monthly Market Maker Cap” of \$550,000 for: (i) electronic and floor Option Transaction Charges; (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 is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest and reversal and conversion strategy executions (as defined in this Section II) are excluded from the Monthly Market Maker Cap.

¹¹ The Exchange has designated “Z1” for dividend strategies, “Z2” for short stock interest and merger strategies, “Z3” for box spread strategies and “Z4” for reversal and conversion and jelly roll strategies.

¹² FBMS is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and

alternative, members may request Exchange staff on the trading floor to input the code into the system.¹⁴ The Exchange will require members to enter a “Z3” on the trading ticket in order to receive the strategy cap for a box spread strategy. The Exchange will note the required designation in a memorandum to floor members when it announces the availability of the strategy cap for box spread strategies.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act¹⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. See Exchange Rule 1080, Commentary .06.

¹³ See Securities Exchange Act Release No. 65228 (August 30, 2011), 76 FR 55453 (September 7, 2011) (SR-Phlx-2012-73) (notice of filing and immediate effectiveness of proposed rule change relating to reversal and conversion strategies).

¹⁴ The system refers to PHLX XL®, the Exchange’s automated trading system. The Exchange believes that providing members the ability to request Exchange staff to mark a Strategy Trade on the day the strategy is executed would provide members with a means to ensure the Strategy Trade is properly marked for purposes of pricing in the event that a floor broker inadvertently forgot to mark a trade. Therefore, the Exchange requires that members executing Strategy Trades either: (1) enter a code on the trading ticket and into the system; (2) enter a code directly into FBMS; or (3) request that the information be input into the system by Exchange staff on the trading floor, on the day the order was executed, to take advantage of certain pricing caps for which they may qualify.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4), (5).

The Exchange believes that adopting a strategy cap for box spreads is reasonable because it should encourage members and member organizations to transact a greater number of box spread strategies on the Exchange's trading floor in order that they may benefit from the fee cap. The Exchange also believes that it is reasonable to permit box spread strategy executions to count toward the Monthly Strategy Cap when members are trading in their own proprietary account to receive the benefit of the combined executions, which will include the ability to achieve the Monthly Strategy Cap by transacting box spreads as well as dividend, merger, short stock interest, reversal and conversion and jelly roll strategies. In addition, other options exchanges offer fee caps for box spreads, namely NYSE Arca, Inc. ("NYSE Arca")¹⁷ and NYSE MKT LLC ("NYSE MKT"),¹⁸ for strategies.

The Exchange believes that adopting a strategy cap for box spreads is equitable and not unfairly discriminatory because all market participants that are assessed transaction fees will have an opportunity to cap floor option transaction charges in Multiply Listed Options with respect to box spreads. In addition, the Exchange believes that it is equitable and not unfairly discriminatory to continue to require that all fee cap strategies, including box spreads, which combine executions for purposes of the Monthly Strategy Cap, must be traded in a member's own proprietary account. The Exchange is not amending the calculation of the Monthly Strategy

¹⁷ NYSE Arca offers a \$750 cap on transaction fees for Strategy Executions involving (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls. The cap applies to each Strategy Execution executed in standard option contracts on the same trading day in the same option class. See NYSE Arca General Options and Trading Permit (OTP) Fees.

¹⁸ NYSE MKT offers a \$750 cap on transaction fees for Strategy Executions involving (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls. The cap applies to all Strategy Executions executed in standard option contracts on the same trading day in the same option class. See NYSE Amex Options Fee Schedule.

Cap which will continue to impose the same requirements on members for all strategies to qualify for the Monthly Strategy Caps.

The Exchange's proposal to exclude Firm floor options transaction charges related to reversal and conversion strategies, jelly rolls, and now box spreads, from the Monthly Strategy Cap is reasonable because these fees would be capped as part of the Monthly Firm Fee Cap, which applies only to Firms. The Exchange believes that the exclusion of Firm floor options transaction charges related to reversal and conversion strategies, jelly rolls and now box spreads from the Monthly Strategy Cap is equitable and not unfairly discriminatory because Firms, unlike other market participants, have the ability to cap transaction fees up to \$75,000 per month with the Monthly Firm Fee Cap. The Exchange would include floor option transaction charges related to box spread strategies in the Monthly Strategy Cap for Professionals, and Broker Dealers, when such members are trading in their own proprietary accounts, because these market participants are not subject to the Monthly Firm Fee Cap or other similar cap. While Specialists and Market Makers are subject to a Monthly Market Maker Cap on both electronic and floor options transaction charges, box spreads would be excluded from the Monthly Market Maker Cap, as all other strategy transactions are excluded from this cap.¹⁹ For the reasons described above, the Exchange believes including box spread strategies in the Monthly Firm Fee Cap is reasonable, equitable and not unfairly discriminatory because the cap provides an incentive for Firms to transact floor transactions on the Exchange, which brings increased liquidity and order flow to the floor for the benefit of all market participants.²⁰

¹⁹ The reversal and conversion strategy and jelly roll executions are excluded from the Monthly Market Maker Cap. See Section II of the Pricing Schedule.

²⁰ Firms are eligible to cap floor options transactions charges and QCC Transaction Fees as part of the Monthly Firm Fee Cap. QCC Transaction Fees apply to QCC Orders as

The Exchange believes that its proposal to apply box spread fee caps to orders originating from the Exchange floor is reasonable because members pay floor brokers to execute trades on the Exchange floor. The Exchange believes that offering fee caps to members executing floor transactions defrays brokerage costs associated with executing strategy transactions and continues to incentivize members to utilize the floor for certain executions.²¹ The Exchange believes that its proposal to apply box spread strategy fee caps to orders originating from the Exchange floor is equitable and not unfairly discriminatory because today all other strategy fee caps are only applicable for floor transactions. The Exchange believes that a requirement that both the buy and sell sides of the order originate from the floor to qualify for the fee cap constitutes equal treatment of members.

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

The [sic] 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 because the proposed changes apply uniformly to all members that incur transaction charges for box spreads.²² Further, other options exchanges today offer fee caps²³ on box spread strategies; therefore, the Exchange believes the proposal is consistent with robust competition and does not provide any unnecessary burden on competition. Further, floor members pay floor brokers to execute trades on the Exchange floor. The Exchange believes that offering fee caps on box

defined in Exchange Rule 1080(o) and Floor QCC Orders as defined in 1064(e). See Section II of the Pricing Schedule.

²¹ The Exchange's proposal would only apply the fee cap to options transaction charges where buy and sell sides originate from the Exchange floor. See proposed rule text in Section II of the Pricing Schedule.

²² Customers are not assessed options transaction charges in Section II of the Pricing Schedule.

²³ Supra notes 17 and 18.

spreads to members executing floor transactions and not electronic executions does not create an unnecessary burden on competition because the fee cap defrays brokerage costs associated with executing box spread strategy transactions, similar to other strategies today. Also, requiring that both the buy and sell sides of the order originate from the floor to qualify for the fee cap constitutes equal treatment of members.

The Exchange operates in a highly competitive market, comprised of twelve options 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 fee caps that are proposed by the Exchange, as described in the proposal, are influenced by these robust market forces and therefore must remain competitive with fees caps at 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.²⁴ 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.

²⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2013-109 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-2013-109. 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 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 offices 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-2013-109, 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.²⁵

Kevin M. O'Neill
Deputy Secretary

²⁵ 17 CFR 200.30-3(a)(12).