

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71256; File No. SR-Phlx-2013-124)

January 8, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Multiply Listed Options Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 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 Substance of the Proposed Rule Change

The Exchange in amending the Exchange’s Pricing Schedule proposes to: (i) amend certain Options Transactions Charges with respect to Section II related to Multiply Listed Options Fees;<sup>3</sup> (ii) eliminate the Electronic Firm Fee Discount in Section II; and (iii) eliminate outdated rule text in Section II related to an expired rebate.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on January 2, 2014.

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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 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 Exchange is proposing to amend various sections of its Pricing Schedule. Specifically, the Exchange proposes to amend various Options Transaction Charges in Section II in both Penny and Non-Penny Pilot Options. The Exchange proposes to eliminate the Electronic Firm Fee Discount.<sup>4</sup> The Exchange proposes to eliminate outdated rule text in Section II to clarify the Pricing Schedule applicable to Qualified Contingent Cross (“QCC”) orders.

Section II – Multiply Listed Options Fees  
Options Transaction Charges

The Exchange currently offers Professionals,<sup>5</sup> Broker-Dealers<sup>6</sup> and Firms<sup>7</sup> a reduced

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<sup>4</sup> The Exchange assesses Firms a reduced Options Transaction Charge in Penny and Non-Penny Options provided a Firm has volume greater than a certain amount of contracts in a month.

<sup>5</sup> 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).

<sup>6</sup> The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

<sup>7</sup> The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation.

Options Transaction Charge with respect to electronic Complex Orders,<sup>8</sup> in either Penny or Non-Penny Pilot Options of \$0.30 per contract. The Exchange is proposing to eliminate the reduced fee with respect to Broker-Dealer and Firm Options Transaction Charges in Penny and Non-Penny Pilot Options. Professionals will continue to be offered the reduced fee with respect to electronic Complex Orders. Today, Broker-Dealers are being assessed \$0.30 per contract for electronic Complex Orders as compared to \$0.45 per contract for Penny Pilot Options and \$0.60 per contract for Non-Penny Pilot Options, which applies to electronic Simple Orders. All Broker-Dealer electronic orders, Complex and Simple Orders, would be assessed \$0.45 per contract for Penny Pilot Options and \$0.60 per contract for Non-Penny Pilot Options as of January 2, 2014. Today, Firms are being assessed \$0.30 per contract for electronic Complex Orders as compared to \$0.45 per contract for Penny Pilot Options and \$0.60 per contract for Non-Penny Pilot Options, which applies to electronic Simple Orders. All Firm electronic orders, Complex and Simple Orders, would be assessed \$0.45 per contract for Penny Pilot Options and \$0.60 per contract for Non-Penny Options as of January 2, 2014. The Exchange desired to incentivize Professionals, Broker-Dealers and Firms to submit electronic Complex Orders to the Exchange at the time the reduced fee became effective. The Exchange believes that Broker-Dealers and Firms were not incentivized to transact electronic Complex Orders. The Exchange believes that eliminating the reduced fee for Broker-Dealers and Firms will not impact trading activity on the Exchange as these market participants were not taking advantage of the reduced

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<sup>8</sup> 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).

fee.

Section II – Multiply Listed Options Fees  
Electronic Firm Fee Discount

The Exchange currently offers Firms the opportunity to reduce Options Transaction Charges in Penny Pilot and Non-Penny Pilot Options to \$0.20 per contract for a given month provided that a Firm has volume greater than 350,000 electronically-delivered contracts in a month (“Electronic Firm Fee Discount”).<sup>9</sup> The Exchange proposes to eliminate this Electronic Firm Fee Discount. The Exchange believes that eliminating the discount for Firms will not impact trading activity on the Exchange as these market participants are not taking advantage of the Electronic Firm Fee Discount.

Section II – Multiply Listed Options Fees  
QCC Bonus

The Exchange previously filed an immediately effective rule change to offer an additional rebate applicable to both electronic QCC Orders (“eQCC”)<sup>10</sup> and Floor QCC Orders<sup>11</sup>

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<sup>9</sup> The Electronic Firm Fee Discount applies per member organization when such members are trading in their own proprietary account. The Exchange initially adopted this discount in 2012 to incentivize Firms to transact electronic orders, by providing Firms with an opportunity to pay lower fees in Section II of the Pricing Schedule by offering a reduction of Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options, provided the Firm had qualifying volume. See Securities Exchange Act Release No. 66985 (May 14, 2012), 77 FR 29726 (May 18, 2012) (SR-Phlx-2012-61).

<sup>10</sup> 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 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).

(collectively “QCC Orders”). The Exchange currently offers an additional rebate of \$35,000 if the member organization transacts 1,750,000 of qualifying QCC contracts (“QCC Bonus”).<sup>12</sup> The QCC Bonus is only available during the month of December 2013. The Exchange proposes to delete the rule text applicable to the QCC Bonus as of January 2, 2014 as that bonus is no longer applicable.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>13</sup> in general, and with Section 6(b)(4) and 6(b)(5) of the Act,<sup>14</sup> 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 the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

### Section II – Multiply Listed Options Fees Options Transaction Charges

The Exchange’s proposal to eliminate the current electronic Complex Order reduced fee with respect to Broker-Dealer and Firm Options Transaction Charges in Penny and Non-Penny Pilot Options is reasonable because these market participants are not taking advantage of the

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<sup>11</sup> A Floor QCC Order must: (i) be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the National Best Bid and Offer (“NBBO”); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. See Rule 1064(e). See also Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-Phlx-2011-56).

<sup>12</sup> The QCC Bonus is in addition to the maximum QCC Rebate of \$375,000 and does not count toward the maximum QCC Rebate of \$375,000.

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

current reduced fee by transacting electronic Complex Orders. The Exchange believes that eliminating such a reduced fee for Broker-Dealers and Firms will not result in any change in the amount of electronic Complex Orders transacted on the Exchange by these market participants. The Exchange's proposal would not impact electronic Simple Orders, which do not receive reduced rates today. By eliminating the reduced fee for electronic Complex Orders, Broker-Dealers and Firms would be assessed \$0.45 per contract for Penny Pilot Options and \$0.60 per contract for Non-Penny Pilot Options for both electronic Complex and Simple Orders. Professionals would continue to receive the electronic Complex Order discount. The reduced fee assessed to Professionals is comparable with electronic Professional fees at other options exchanges.<sup>15</sup>

The Exchange's proposal to eliminate the current electronic Complex Order reduced fee with respect to Broker-Dealer and Firm Options Transaction Charges in Penny and Non-Penny Pilot Options is equitable and not unfairly discriminatory for the reasons which follow. Today, Broker-Dealer and Firm electronic Simple Orders are not reduced for electronic Complex Orders [sic]. Broker-Dealers and Firms are assessed \$0.45 per contract for electronic Penny Pilot Options Simple Orders and \$0.60 per contract for electronic Non-Penny Pilot Options Simple Orders. The Exchange's proposal to eliminate the reduced fee for Broker-Dealer and Firm electronic Complex Orders would remove the current differentiation as between Broker-Dealer and Firm electronic Complex versus Simple Orders and would assess those electronic transactions the same Options Transaction Charges in both Penny and Non-Penny Pilot Options.

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<sup>15</sup> CBOE assesses a Professional and Voluntary Professional a \$0.30 per contract electronic fee in Penny and Non-Penny Classes. See CBOE's Fees Schedule. NYSE Amex assesses a tiered electronic Professional Customer rate starting at \$.32 per contract for electronic orders which take liquidity from 0 to 16,999 contracts. See NYSE AMEX Options Fee Schedule.

By eliminating the reduced fee for Broker-Dealers and Firms, these market participants will pay a higher fee as compared to a Professional for electronic Complex Orders. A Professional only pays a reduced fee for electronic Non-Penny Pilot Complex Orders as the reduced fee for electronic Penny Pilot Options in Complex Orders is the same as that for Penny Pilot Options in Simple Orders.

With respect to Professionals, these market participants would continue to receive the reduced fee of \$0.30 per contract with respect to electronic Complex Orders. Today, Professionals are assessed a \$0.30 per contract Options Transaction Charge for Penny Pilot Options and a \$0.60 per contract Options Transaction Charge for Non-Penny Pilot Options with respect to Simple Orders. A Professional receiving a reduced fee of \$0.30 per contract for electronic Complex Orders is assessed the same Options Transaction Charge as with electronic Simple Orders. Today, a Professional pays \$0.30 per contract for electronic Non-Penny Pilot Options transactions in electronic Complex Orders as compared to \$0.60 per contract for electronic Non-Penny Pilot Options transactions in electronic Simple Orders. The Exchange believes that it is equitable and not unfairly discriminatory to assess Professionals a reduced fee for electronic Complex Orders in Non-Penny Pilot Options because Professionals engage in trading activity similar to that conducted by Specialists or Market Makers. For example, Professionals continue to join bids and offers on the Exchange and thus compete for incoming order flow. For these reasons, the Exchange assesses Professionals Penny and Non-Penny Pilot electronic Options Transaction Charges at a rate which is greater than fees assessed to a Specialist and Market Maker and less than electronic fees assessed to a Firm and Broker-Dealer. Specialists and Market Makers are assessed lower electronic fees as compared to Professionals,

because Specialists and Market Makers have burdensome quoting obligations<sup>16</sup> to the market which do not apply to Professionals, Customers, Firms and Broker-Dealers. Customers are not assessed Options Transactions Charges in either Penny Pilot or Non-Penny Pilot Options because Customer order flow brings liquidity to the market, which in turn benefits all market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Today, with respect to Simple Orders, Broker-Dealers and Firms pay higher fees as compared to a Professional for electronic transactions and this is not changing.<sup>17</sup>

The Exchange believes that continuing to assess Professionals a higher electronic Options Transaction Charges in both Penny Pilot and Non-Penny Pilot Options of \$0.30 and \$0.60 per contract, respectively, as compared to a floor Options Transaction Charge in both Penny Pilot and Non-Penny Pilot Options of \$0.25 per contract is reasonable, equitable and not unfairly discriminatory because these fees recognize the distinction between the floor order entry model and the electronic model and the proposed fees respond to competition along the same lines.<sup>18</sup> Floor participants incur costs associated with accessing the floor, i.e. need for a floor broker, and

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<sup>16</sup> See Exchange Rule 1014 entitled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

<sup>17</sup> Firms and Broker-Dealers are assessed a Penny Pilot Options Transaction Charge of \$0.45 per contract. Firms and Broker-Dealers are assessed a Non-Penny Pilot Options Transaction Charge of \$0.60 per contract.

<sup>18</sup> A transaction resulting from an order that was electronically delivered utilizes Phlx XL II. See Exchange Rules 1014 and 1080. Electronically delivered orders do not include orders transacted on the Exchange floor. A transaction resulting from an order that is non-electronically-delivered is represented on the trading floor by a floor broker. See Exchange Rule 1063. All orders will be either electronically or non-electronically delivered.



other costs which are not born by electronic members. Today, the Exchange assesses different fees for electronic as compared to floor transactions for Firms, Broker-Dealers, Specialists and Market Makers in Section II of the Pricing Schedule.

Section II – Multiply Listed Options Fees  
Electronic Firm Fee Discount

The Exchange's proposal to eliminate the Electronic Firm Fee Discount which is currently offered to Firms to reduce Options Transaction Charges in Penny Pilot and Non-Penny Pilot Options is reasonable because market participants were not taking advantage of the Electronic Firm Fee Discount.

The Exchange's proposal to eliminate the Electronic Firm Fee Discount which is currently offered to Firms to reduce Options Transaction Charges in Penny Pilot and Non-Penny Pilot Options is equitable and not unfairly discriminatory because the Exchange will not offer such a discount to any market participant.

Section II – Multiply Listed Options Fees  
QCC Bonus

The Exchange's proposal to remove rule text related to the QCC Bonus is reasonable because removing the outdated rule text will add clarity to the Pricing Schedule.

The Exchange's proposal to remove rule text related to the QCC Bonus is equitable and not unfairly discriminatory because the QCC Bonus will no longer be in effect as of January 2, 2014 and therefore not available to any market participant.

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

The Exchange does not believe that the proposed rule change will impose an undue burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Eliminating the electronic Complex Order reduced fee with respect to Broker-Dealers and Firms

for Options Transaction Charges in Penny and Non-Penny Pilot Options and not eliminating the reduced fee for Professionals, reflects the trading activity of these market participants.

Professionals engage in trading activity similar to that conducted by Specialists or Market Makers such as joining bids and offers on the Exchange and competing for incoming order flow. This distinction is consistent with the current differentials that exist between these market participants with respect to the current Options Transaction Charges which are assessed to these participants.<sup>19</sup> Further, Specialists and Market Makers would be assessed lower electronic fees as compared to Professionals, because Specialists and Market Makers have burdensome quoting obligations<sup>20</sup> to the market which do not apply to Professionals, Customers, Firms and Broker-Dealers. Customers are not assessed Options Transactions Charges in either Penny Pilot or Non-Penny Pilot Options because Customer order flow brings liquidity to the market, which in turn benefits all market participants.

Eliminating the Electronic Firm Fee Discount does not create an undue burden on competition. Today, this discount is currently available only to Firms. This discount would not be offered to any market participant as of January 2, 2014.

The QCC Bonus would be unavailable to all market participants and therefore would not create an undue burden on competition. Also, removing unnecessary rule text from the Pricing Schedule adds clarity to the rule text.

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<sup>19</sup> Professionals are assessed a Penny Pilot Options Transaction Charge of \$0.30 per contract and a Non-Penny Pilot Options Transaction Charge of \$0.60 per contract. Firms and Broker-Dealers are assessed a Penny Pilot Options Transaction Charge of \$0.45 per contract. Firms and Broker-Dealers are assessed a Non-Penny Pilot Options Transaction Charge of \$0.60 per contract.

<sup>20</sup> See Exchange Rule 1014 entitled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

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 fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces. Therefore these fees and rebates must remain competitive with fees charged and rebates paid by other venues and 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.<sup>21</sup> 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.

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<sup>21</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2013-124 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-2013-124. 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-2013-124 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.<sup>22</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).