

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71673; File No. SR-Phlx-2014-15)

March 10, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to SPY Simple Orders Fees For Removing Liquidity

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 February 27, 2014, 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 modify the Exchange’s Pricing Schedule to amend Simple Order pricing in Section I, entitled Rebates and Fees for Adding and Removing Liquidity in SPY.<sup>3</sup>

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on March 3, 2014.

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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> Options overlying Standard and Poor’s Depository Receipts/SPDRs (“SPY”) are based on the SPDR exchange-traded fund (“ETF”), which is designed to track the performance of the S&P 500 Index.

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 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 the Simple Order Fees for Removing Liquidity in Section I applicable to transactions overlying SPY. The Exchange currently assesses Customers, Specialists,<sup>4</sup> Market Makers,<sup>5</sup> Firms,<sup>6</sup> Broker-Dealers<sup>7</sup> and Professionals<sup>8</sup> a \$0.47 per contract

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

<sup>5</sup> 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.

<sup>6</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.

<sup>7</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>8</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).

Fee for Removing Liquidity in SPY Simple Orders. The Exchange is proposing to increase Fees for Removing Liquidity in SPY Simple Orders from \$0.47 to \$0.49 per contract for all market participants, except Customers. The Exchange is increasing these fees at this time because it believes that the increase will allow the Exchange to enhance its services and remain competitive with other options exchanges.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Section 6(b)(4) and 6(b)(5) of the Act,<sup>10</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.

The Exchange's proposal to increase Fees for Removing Liquidity in SPY Simple Orders from \$0.47 to \$0.49 per contract for all market participants, except for Customers, is reasonable because the increase is consistent with or less than [sic] rates assessed by other options exchanges, such as Topaz Exchange, LLC ("Gemini"), NYSE ARCA, Inc. ("NYSE Arca"), BATS Exchange, Inc. ("BATS") and NASDAQ Options Market LLC ("NOM").<sup>11</sup> The

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<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>11</sup> See Gemini's Fee Schedule. Gemini assesses taker fees for Priority Customer sof [sic] \$0.45 per contract and \$0.48 per contract for all market participants. See NYSE Arca fees Schedule. NYSE Arca assesses all non-customer market participants a take liquidity fee of \$0.48 per contract. Customers are assessed \$0.45 per contract for removing liquidity. Gemini permits its members to lower certain of these fees provided they meet certain criteria. See BATS BZX Exchange Fee Schedule. BATS assesses a \$0.48 charge per contract for a Professional, Firm or Market Maker order that removes liquidity and \$0.47 per contract for a Customer order that removes liquidity. BATS permits its members to lower certain of these fees provided they meet certain criteria. See NOM

Exchange believes that the SPY Simple Order Fees for Removing Liquidity remain competitive with other options markets. The Exchange believes that this proposal will bring additional revenue to the Exchange to allow the Exchange to enhance its services and remain competitive with other options exchanges.

The Exchange's proposal to increase Fees for Removing Liquidity in SPY Simple Orders from \$0.47 to \$0.49 per contract for all market participants, except Customers, is equitable and not unfairly discriminatory because all non-Customer market participants will be assessed a uniform fee to remove liquidity in SPY Simple Orders of \$0.49 per contract. The Exchange will continue to assess Customers a SPY Simple Order Fee for Removing Liquidity of \$0.47 per contract. The Exchange assesses Customers lower or no fees today<sup>12</sup> on Phlx because Customer order flow is unique. 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. Other options exchanges also assess Customers lower fees.<sup>13</sup> For these reasons, the Exchange believes this proposal is equitable and not unfairly discriminatory.

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Rules at Chapter XV, Section 2. Currently, NOM assesses \$0.45 per contract for a Customer to remove liquidity and \$0.49 per contract for all other market participants, except NOM Market Makers who are assessed \$0.48 per contract. NOM Participants are provided the ability to reduce certain fees provided they add requisite liquidity.

<sup>12</sup> For example, on PHLX today the Customer fee is \$0.00 for all electronically-delivered multiply-listed options, except SPY, whereas as [sic] other market participants are assessed fees ranging from \$0.22 to \$0.60 per contract. See NASDAQ OMX PHLX, LLC's Pricing Schedule.

<sup>13</sup> See note 11.

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

Phlx 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. The Exchange believes that increasing the SPY Simple Order Fees for Removing Liquidity for all market participants, except Customers, does not impose a burden on competition, but rather that the proposed rule change will continue to promote competition on the Exchange as the rates proposed above are consistent with the current rates assessed by competing options exchanges.<sup>14</sup>

The Exchange does not believe that assessing Customers a lower Fee for Removing Liquidity when transacting SPY Simple Orders, as compared to other market participants, imposes an undue burden on competition because Customer liquidity benefits all market participants by providing more trading opportunities, which attracts 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. All market participants are eligible to qualify for a Customer Rebate.

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 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.

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<sup>14</sup> See note 11.

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>15</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.

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-2014-15 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2014-15. 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, D.C. 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-2014-15, 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>16</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).