SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72630; File No. SR-Phlx-2014-47)

July 16, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section I and Section II of the 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 July 10, 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 amend Section I of the Pricing Schedule which pertains to Rebates and Fees for Adding and Removing Liquidity in SPY and Section II of the Pricing Schedule which pertains to Multiply Listed Options fees.[3]

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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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Multiply Listed Options fees 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 this filing is to amend Section I of the Exchange's Pricing Schedule entitled "Rebates and Fees for Adding and Removing Liquidity in SPY" to eliminate the $0.38 Customer Complex Order Rebate for executions in SPDR S&P 500 ETF ("SPY"), and to amend Section II of the Exchange's Pricing Schedule entitled "Multiply Listed Options" to: (i) amend the Firm[4] Options Transaction Charges in Penny Pilot Options[5] and non-Penny Pilot Options for electronic simple orders in certain symbols and (ii) amend the Monthly Market Maker Cap.

Rebates and Fees for Adding and Removing Liquidity in SPY

The Exchange proposes to eliminate the Customer Complex Order Rebate for executions in SPY.[6] Currently, the Exchange does not assess a Customer either a Fee for Adding or

4 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.

5 The Penny Pilot was established in January 2007 and was last extended in May 2014. See Securities and Exchange Release No. 72245 (May 23, 2014), 79 FR 31164 (May 30, 2014) (SR-Phlx-2014-37).

6 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

Removing Liquidity in Complex Orders in SPY options. All market participants, other than a Customer, are assessed a $0.10 per contract Complex Order Fee for Adding Liquidity in SPY options. The Exchange also assesses Complex Order Fees for Removing Liquidity for SPY options as follows: a Specialist[7] and Market Maker[8] are assessed a $0.40 per contract Complex Order Fee for Removing Liquidity and a Firm, Broker-Dealer[9] and Professional[10] are assessed $0.50 per contract. Complex Order Fees for Removing Liquidity, applicable to Specialists and Market Makers, are decreased by $0.02 per contract when the Specialist or Market Maker transacts against a Customer Order directed to that Specialist or Market Maker for execution. In addition, the Exchange currently pays a Customer rebate of $0.38 per electronically-delivered and executed contract in Complex Orders in SPY options, including Customer executions that occur as part of a Complex electronic auction. The Exchange is now proposing to eliminate this $0.38 per contract Customer rebate.

Options Transaction Charges

The Exchange proposes to reduce the Firm Options Transaction Charges in Penny Pilot Options and non-Penny Pilot Options for electronic simple orders in Apple Inc. ("AAPL"), Bank

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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).

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

8 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.

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

10 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).

of America Corporation ("BAC"), iShares MSCI Emerging Markets ETF ("EEM"), Facebook, Inc. ("FB"), iShares China Large-Cap ETF ("FXI"), iShares Russell 2000 ETF ("IWM"), PowerShares QQQ Trust ("QQQ"), Twitter, Inc. ("TWTR"), iPath S&P 500 VIX Short-Term Futures ETF ("VXX") and Financial Select Sector SPDR Fund ("XLF") to $0.25 per contract. Currently, a Firm is assessed an electronic Options Transaction Charge for electronic simple orders in these symbols of $0.48 per contract (Penny Pilot Options) or $0.70 (non-Penny Pilot Options)[11].

The Exchange believes that offering Firms the opportunity to lower the Options Transaction Charge from $0.48 to $0.25 (for Penny Pilot) and from $0.70 to $0.25 (for non-Penny Pilot) for electronic simple orders in these symbols will encourage the transaction of these types of orders on Phlx, thereby increasing liquidity to the benefit of all market participants.

Monthly Market Maker Cap

Today, 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, reversal and conversion, jelly roll and box spread strategy executions (as defined in Section II) are excluded from the Monthly Market

11 AAPL, BAC, EEM, FB, FXI, IWM, QQQ, VXX and XLF are currently Penny Pilot options and TWTR is a non-Penny Pilot option. The $0.25 per contract pricing proposed herein is symbol-specific and will continue to apply to these symbols whether or not they are deleted from or added to the Penny Pilot.

Maker Cap. In addition, Specialists or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Market Maker Cap are assessed a $0.17 per contract fee in symbols other than AAPL, BAC, FB, IWM and QQQ.

The Exchange now proposes to add EEM, FXI, TWTR, VXX and XLF to the list of symbols to which this $0.17 per contract fee does not apply. The Exchange believes that assessing Specialists and Market Makers no fee in these symbols if they are on the contra-side of an electronically-delivered and executed Customer order; and have reached the Monthly Market Maker Cap will incentivize Specialists and Market Makers to offer improved bids and offers on the Exchange in these symbols.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act[13] 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.

Rebates and Fees for Adding and Removing Liquidity in SPY

The Exchange's proposal to eliminate the Customer Complex Order Rebate for executions in SPY is reasonable, equitable and not unfairly discriminatory because Customers, unlike other market participants, already are not assessed Fees for Adding Liquidity or Fees for Removing Liquidity with respect to execution of Complex Orders in SPY. No other market

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12 15 U.S.C. 78f(b).

13 15 U.S.C. 78f(b)(4), (5).

participant receives a rebate for executions of Complex Orders in SPY. The elimination of the rebate will apply to all Customers uniformly.

Options Transaction Charges

The Exchange's proposal to reduce the Firm Options Transaction Charges for simple electronic orders from $0.48 per contract (in Penny Pilot options) and $0.70 per contract (in non-Penny Pilot options) to $0.25 per contract in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF is reasonable, equitable and not unfairly discriminatory, because it will allow the Exchange to incentivize Firms to send electronic simple orders in these symbols to the Exchange and because pricing by symbol is a common practice on many U.S. options exchanges as a means to incentive order flow to be sent to an exchange for execution.[14] The Exchange believes it is reasonable to use a pricing reduction to provide additional opportunities for members to increase their participation in the market. The Exchange's fees will be competitive with fees at other options markets. Although the Exchange will still be assessing Firms more than Customers (which do not pay the Option Transaction Charge in Penny Pilot or in non-Penny Pilot options), Customer order flow enhances liquidity on the Exchange for the benefit of all market participants and 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. Although Firms will still be charged more for Penny Pilot options than Specialists and Market Makers who are charged $0.22, Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply

[14] See, e.g., the International Securities Exchange LLC ("ISE") Schedule of Fees.

to other market participants.[15] They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings.

Finally, as proposed, Firms will be charged only $0.25 in these symbols which is less than the Professional and Broker-Dealer charge of $0.48 (for Penny Pilot options) or $0.70 (for non-Penny Pilot options). The Exchange believes that the proposed fee differential between Firms and Broker-Dealers is equitable and not unfairly discriminatory because it is similar to the pricing offered by another options exchange.[16] Moreover, the proposed differential does not misalign pricing, in that Firms already benefit from certain pricing advantages that Broker-Dealers do not also enjoy (for example, the Firm Monthly Fee Cap[17]). The proposed fee reduction that will apply to Firms but not to Broker-Dealers is equitable and not unfairly discriminatory for the same reasons that the Firm Monthly Fee Cap which applies to Firms and not to Broker-Dealers is equitable and not unfairly discriminatory. The fee reduction proposed herein, like the Monthly Firm Fee Cap, provides an incentive for Firms to transact order flow on

[15] See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

[16] On the MIAX Options Exchange ("MIAX") Fee Schedule, non-member Broker-Dealers are assessed a $0.45 per contract standard options transaction fee and a Firm is assessed a $0.25 per contract standard options transaction fee.

[17] Firms are subject to a maximum fee of $75,000 ("Monthly Firm Fee Cap"). Firm Floor Option Transaction Charges and QCC Transaction Fees, 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 Section II of the Pricing Schedule) are excluded from the Monthly Firm Fee Cap. Reversal and conversion, jelly roll and box spread strategy executions (as defined Section II) are included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap. See Section II of the Pricing Schedule.

the Exchange, which order flow brings increased liquidity to the Exchange for the benefit of all Exchange participants. To the extent the purpose of the proposed Firm fee reduction is achieved, all the Exchange's market participants, including Broker-Dealers, should benefit from the improved market liquidity. Further, competitive forces are influencing the price reduction in these symbols for Firm orders.

The Exchange desires to incentivize Firms that receive reduced rates at other options exchanges to select Phlx as a venue by offering competitive pricing to these market participants. Such competitive, differentiated pricing exists today on other options exchanges. The Chicago Board of Options Exchange, Incorporated ("CBOE") assesses a reduced fee to Clearing Trading Permit Holder Proprietary[18] participants of $0.35 per contract for electronic Penny and Non-Penny Pilot options. CBOE assesses Broker-Dealers/Professionals/Non-Trading Permit Holder Market Makers a $0.45 per contact fee for electronic Penny Pilot options and a $0.60 per contract fee for electronic Non-Penny Pilot options classes.[19] CBOE has a differential as between Clearing Trading Permit Holder Proprietary participants (the equivalent of Firm on Phlx) and other non-Customer, non-Market Maker participants of $0.10 per contract in electronic Penny Pilot options and $0.25 per contract in Non-Penny Pilot options. Further, CBOE assesses Broker-Dealers/Professionals/Non-Trading Permit Holder Market Makers between $0.35 - $0.44 per contract for SPX executions (a singly listed CBOE proprietary product) versus the Clearing Trading Permit Holder Proprietary (the equivalent of Firm on Phlx) who is assessed between $0.25 - $0.01 per contract in SPX for a maximum differential of $0.43 per contract in a CBOE

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18 This market participant clears in the Firm range at OCC. See CBOE's Fees Schedule at note 11. See also Regulatory Circular RG13-038.

19 See CBOE's Fees Schedule.

proprietary product.[20] Phlx's differential as between a Firm on the one hand and other non-Customer, non-Specialist/Market Makers on the other is not as wide as CBOE's pricing and moreover a competitive offering given current pricing differentials on other options exchange such as MIAX and CBOE.

The Exchange believes there is nothing impermissible about Phlx offering a discount solely to Firm since this is consistent with the above examples and longstanding differentials between Firm, other broker-dealers and professionals. The options exchanges have differentiated between retail customers and professional customers, broker/dealers clearing in the "Firm" range at The Options Clearing Corp, broker/dealers registered as market makers, away market makers, early-adopting market makers, and many others; and the Commission has permitted price differentiation based on whether an order is processed manually versus electronically. The proposal is consistent with previously accepted pricing proposals accepted by the Commission.

The Exchange believes it is equitable and not unfairly discriminatory to charge a Professional the same rate as a Broker-Dealer, as it can be argued that Professionals have the same technological and information advantages as Broker-Dealers trading for their own account,[21] and as such receive similar rates. The proposed differentiation as between Customers, Specialists and Market Makers and other Firms recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants.

Monthly Market Maker Cap

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20 Id.

21 See Securities Exchange Act Release No. 66668 (March 28, 2012), 77 FR 20090 (April 3, 2012) (SR-Phlx-2012-35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Equity Options Fees and Singly Listed Options Fee) at page 20091.

The Exchange's proposal to not assess a fee to Specialists or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Market Maker Cap in EEM, FXI, TWTR, VXX and XLF as well as in AAPL, BAC, FB, IWM and QQQ is reasonable, equitable and not unfairly discriminatory because the Exchange desires to incentivize Specialists and Market Makers to transact more options in these symbols and bring additional liquidity to the Exchange. All market participants will benefit from the increased Customer liquidity brought to the Exchange. The Exchange today differentiates pricing by option symbols.[22] Specialists and Market Makers will continue to pay the same fee of $0.17 per contract in Penny and Non-Penny Pilot Options, when the cap is satisfied, except for the symbols noted above. Specialists and Market Makers have burdensome quoting obligations[23] to the market that do not apply to Customers, Professionals, Firms and Broker-Dealers. Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. Additionally, Specialists and Market Makers incur costs unlike other market participants including, but not limited to, Payment for Order Flow ("PFOF")[24] and other costs associated with market making activities, which results in a higher average cost per execution as compared to Firms, Broker-Dealers and Professionals. The proposed differentiation as between Specialists and Market Makers as compared to other market participants recognizes the differing contributions made to the trading environment on the Exchange by these market participants. Customer liquidity

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[22] See Section I of the Pricing Schedule which differentiates pricing in SPDR S&P 500 ("SPY") options. See also Securities Exchange Release No. 66757 (April 6, 2012), 77 FR 22034 (April 12, 2012) (SR-Phlx-2012-45).

[23] See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders".

[24] Specialists and Market Makers, as compared to other market participants, are assessed PFOF when transacting Customer electronic orders.

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. The Exchange believes that offering Specialists and Market Makers the opportunity to cap fees in certain highly liquid Penny Pilot Options is equitable and not unfairly discriminatory for the reasons noted above.

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's proposal to eliminate the Customer Complex Order Rebate for executions in SPY will not impose an unnecessary or inappropriate burden on competition because all Exchange members will be treated uniformly with respect to the elimination of Customer Complex Order Rebate in SPY.

The Exchange's proposal to reduce the Firm Options Transaction Charges for simple electronic orders in Penny Pilot Options from $0.48 per contract (in Penny Pilot options) and $0.70 per contract (in non-Penny Pilot options) to $0.25 per contract in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF will not impose an unnecessary or inappropriate burden on competition because the $0.25 assessed to Firms under this proposal is similar to rates offered by other options exchanges, chiefly MIAX ($0.25), Chicago Board Options Exchange ($0.35) and NYSE AMEX Options ($0.32).

Specialists and Market Makers will be offered the opportunity to pay no fees, after they have satisfied the obligations related to the Monthly Market Maker Cap, in EEM, FXI, TWTR, VXX and XLF as well as in AAPL, BAC, FB, IWM and QQQ. As noted above Specialists and

Market Makers have burdensome quoting obligations to the market that do not apply to Customers, Professionals, Firms and Broker-Dealers. Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. Additionally, Specialists and Market Makers incur costs unlike other market participants including, but not limited to, PFOF and other costs associated with market making activities, which results in a higher average cost per execution as compared to Firms, Broker-Dealers and Professionals. The proposed differentiation as between Specialists and Market Makers as compared to other market participants recognizes the differing contributions made to the trading environment on the Exchange by these 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. For these reasons noted above, the Exchange does not believe that offering Specialists and Market Makers the opportunity to cap fees in certain symbols imposes an undue burden on competition.

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 described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged 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.[25]

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-2014-47 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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[25] 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2014-47. 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 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-2014-47, 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.[26]

Kevin M. O'Neill
Deputy Secretary

[26] 17 CFR 200.30-3(a)(12).