

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 75749; File No. SR-Phlx-2015-71)

August 21, 2015

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Options Regulatory Fee

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 17, 2015, 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 proposes to make adjustments to its Options Regulatory Fee (“ORF”) by amending Section IV, Part D of the Pricing Schedule.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative September 1, 2015 and February 1, 2016, as noted herein.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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: (1) decrease the ORF from \$0.0045 per to \$0.0035 as of September 1, 2015 and increase the ORF from \$0.0035 to \$0.0040 as of February 1, 2016 to account for additional fine revenue, cost reductions and to balance the Exchange’s regulatory revenue against the anticipated costs and potential fines; and (2) remove the requirement that the ORF may only be modified semi-annually.

Background

The ORF is assessed to each member for all options transactions executed or cleared by the member that are cleared at The Options Clearing Corporation (“OCC”) in the Customer range (i.e., that clear in the Customer account of the member's clearing firm at OCC). The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. The ORF is imposed upon all transactions executed by a member, even if such transactions do not take place on the Exchange.³ The ORF also includes options transactions that are not executed by an

³ The ORF applies to all “C” account origin code orders executed by a member on the Exchange. Exchange Rules require each member to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the Rules of the Exchange and report resulting transactions to OCC. See Exchange Rule 1063, Responsibilities of Floor Brokers, and Options Floor Procedure Advice F-4, Orders

Exchange member but are ultimately cleared by an Exchange member.⁴ The ORF is not charged for member proprietary options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

The ORF is designed to recover a portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, do not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

⁴ In the case where one member both executes a transaction and clears the transaction, the ORF is assessed to the member only once on the execution. In the case where one member executes a transaction and a different member clears the transaction, the ORF is assessed only to the member who executes the transaction and is not assessed to the member who clears the transaction. In the case where a non-member executes a transaction and a member clears the transaction, the ORF is assessed to the member who clears the transaction.

ORF Adjustments

The Exchange is proposing to decrease the ORF from \$0.0045 to \$0.0035 as of September 1, 2015 and increase the ORF from \$0.0035 to \$0.0040 as of February 1, 2016 in order to account for regulatory revenue from disciplinary actions taken by the Exchange. The Exchange regularly reviews its ORF to ensure that the ORF, in combination with its other regulatory fees and fines, do not exceed regulatory costs. The Exchange believes that decreasing the ORF by \$0.0010 from September 1, 2015 through January 31, 2016 and then adjusting the ORF as of February 1, 2016 to \$.0040 (a \$0.0005 reduction from the current rates), will permit the Exchange to cover a material portion of its regulatory costs, while not exceeding regulatory costs.

Semi-Annual Changes to ORF

The Exchange previously filed a rule change to Section IV, Part D of the Pricing Schedule to specify the frequency with which the Exchange may change the ORF.⁵ At that time, the Exchange amended the Pricing Schedule to specify that the Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August.⁶ The Exchange stated in that filing, “[i]n addition to submitting a proposed rule change to the Securities and Exchange Commission (“Commission”) as required by the Act to increase or decrease the ORF, the Exchange will notify participants via an Options Trader Alert of any anticipated change in the amount of the fee at least 30 calendar days prior to the effective date of the change.”⁷

⁵ See Securities Release No. 71569 (February 19, 2014), 79 FR 10593 (February 25, 2014) (SR-Phlx-2014-12).

⁶ Id.

⁷ Id.

The Exchange is proposing to eliminate the requirement that its ORF may be only increased or decreased semi-annually because the Exchange believes it requires the flexibility to amend its ORF as needed to meet its regulatory requirements and adjust its ORF to account for the regulatory revenue that it receives and the costs that it incurs, as evidenced by the adjustments proposed in this rule change. While the Exchange is eliminating the requirement to adjust only semi-annually, it will continue to submit a rule proposal with the Commission for each modification to the ORF and notify participants via an Options Trader Alert of any anticipated change in the amount of the fee at least thirty (30) calendar days prior to the effective date. The Exchange believes that the prior notification to market participants will provide guidance on the timing of any changes to the ORF and ensure market participants are prepared to configure their systems to properly account for the ORF.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative September 1, 2015 and February 1, 2016, as noted herein.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,⁹ 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 that the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that lowering the ORF from \$0.0045 to \$0.0035 as of September

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4) and (5).

1, 2015 and then increasing the ORF from \$0.0035 to \$0.0040 as of February 1, 2016 is reasonable because the Exchange's collection of ORF needs to be balanced against the amount of regulatory revenue collected by the Exchange. The Exchange believes that the proposed adjustments noted herein will serve to balance the Exchange's regulatory revenue against the anticipated regulatory costs. It is further reasonable because both price changes discussed herein represent a price reduction compared to the current rate of \$0.0045.

The Exchange believes that lowering the ORF from \$0.0045 to \$0.0035 as of September 1, 2015 and then increasing the ORF from \$0.0035 to \$0.0040 as of February 1, 2016 is equitable and not unfairly discriminatory because these adjustments would be applicable to all members on all of their transactions that clear as Customer at OCC. In addition, the ORF seeks to recover the costs of supervising and regulating members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The ORF is not charged for member proprietary options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those members that require more Exchange regulatory services based on the amount of Customer options business they conduct. Regulating Customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-Customer trading activity. Surveillance, regulation and examination of non-Customer trading activity generally tends to be more automated and less labor intensive. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are anticipated to be higher than the costs associated with administering the non-Customer

component of its regulatory program. As such, the Exchange proposes assessing higher fees to those members that will require more Exchange regulatory services based on the amount of Customer options business they conduct.¹⁰ Additionally, the dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

The Exchange believes that the proposed rule change to remove the limit to amend the ORF only semi-annually, with advance notice, is reasonable because the Exchange will continue to provide market participants with thirty (30) days advance notice of amending its ORF. Also, the Exchange is required to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, do not exceed regulatory costs. Therefore, the Exchange believes it is reasonable to remove the semi-annual limit to amend its ORF in order to permit the Exchange to make amendments to its ORF as necessary to comply with the Exchange's obligations.

The Exchange believes that the proposed rule change to remove the limit to amend the ORF only semi-annually, with advance notice, is equitable and not unfairly discriminatory because it will apply in the same manner to all members that are subject to the ORF. Moreover, the Exchange believes that the proposed ORF is a small incremental cost for Customer executions.¹¹ The Exchange has in place a regulatory structure to surveil for, exam [sic] and monitor the marketplace for violations of Exchange Rules. The ORF assists the Exchange to

¹⁰ The ORF is not charged for orders that clear in categories other than the Customer range at OCC (e.g., Market Maker orders) because members incur the costs of memberships and through their memberships are charged transaction fees, dues and other fees that go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

¹¹ The Exchange does not assess a Customer any transaction fees in Multiply Listed Options, except in SPY, and pays Customer rebates.

fund the cost of this regulation of the marketplace.

Also, all members will continue to receive advance notice of changes to the ORF.

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 does not believe that adjusting its ORF creates an undue burden on inter-market or intra-market competition. The Exchange will adjust its ORF for all members on all of their transactions that clear as Customer at OCC. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. Additionally, the dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The Exchange's members are subject to ORF on other options markets.¹²

The Exchange does not believe that removing the limit to amend the ORF semi-annually, with advance notice, creates an undue burden on competition. The Exchange will continue to provide the same advance notice of changes to the ORF as it does today.

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.¹³ 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

¹² For example, see the Chicago Board Options Exchange, Incorporated's Fees Schedule and the International Securities Exchange, LLC's Fee Schedule.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

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. Please include File Number SR-Phlx-2015-71 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.

All submissions should refer to File Number SR-Phlx-2015-71. 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-2015-71 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.¹⁴

Robert W. Errett
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).