

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77143; File No. SR-Phlx-2016-09)

February 16, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Policy for Amending Billing Information and a Research 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 February 3, 2016, NASDAQ PHLX LLC (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (“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 adopt a new policy entitled, “Policy for Amending Billing Information.” The Exchange also proposes to adopt a Research Fee.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a “Policy for Amending Billing Information” and a Research Fee. The Exchange also proposes some minor amendments to clarify the Pricing Schedule. Each of these changes will be discussed in more detail below. Adopting a policy regarding amending billing information will clarify how the Exchange will treat such corrections. The Research Fee is intended to relieve the Exchange of administrative burdens associated with handling errors on the part of members and member organizations (hereinafter “member(s)”) for proper billing with respect to strategy transactions.

Policy for Amending Billing Information

The Exchange proposes to adopt a Policy for Amending Billing Information which would apply to corrections submitted to the Exchange after trade date and prior to the issuance of an invoice. These corrections are errors on the part of members with respect to executed orders that impact billing. These errors are not Exchange errors as no billing has occurred at this time for the transactions at issue.³ The Exchange notes that members may correct certain trade information on trade date, but not after the trade date without Exchange intervention. For example, today a member is required to mark transactions related to strategy trades⁴ by identifying the specific strategy. Members may need to correct a marking related to a strategy

³ The Exchange bills one month in arrears.

⁴ The Exchange permits dividend, merger, short stock interest, reversal or conversion, jelly roll or box spread strategies on the Exchange.

trade by amending the type of identified transactions or adding a missed marking throughout the trading day. Once the trade date passes, Exchange staff would need to be notified of such errors for billing purposes.⁵ Also, once an invoice is issued, the Exchange's Billing Dispute Policy⁶ is effective.

The Exchange proposes to require members to submit corrections impacting billing to the Exchange, in writing, and accompanied by supporting documentation. The Exchange believes that requiring members to support their corrections to the billing information is important to validate trades for billing purposes. Further, the Exchange proposes to require that only members may submit information related to billing corrections. This policy will eliminate the need for the Exchange to deal with Customers directly. Members are responsible for all trades submitted to the Exchange and should be responsible for handling related billing information corrections such as marking strategy transactions. The Exchange also proposes to clarify at this time that only members may submit billing disputes. The Exchange proposes to add this language to the rule text for clarity and to hold members responsible for also handling billing disputes.

⁵ Members may correct certain information at The Options Clearing Corporation ("OCC"). The Exchange is able to capture corrected information such as capacity changes for billing purposes through OCC records. The type of information that would need to be corrected at the Exchange by submitting a trade correction for billing purposes includes marking trades for strategy transactions, contra party information, account information or CMTA changes.

⁶ The Exchange's billing dispute policy provides that all disputes must be submitted to the Exchange in writing and must be accompanied by supporting documentation. All disputes must be submitted no later than sixty (60) days after receipt of a billing invoice, except for disputes concerning NASDAQ OMX PSX fees, proprietary data feed fees and co-location service fees. After sixty calendar days, all fees assessed by the Exchange are final.

The Exchange's adoption of this Policy for Amending Billing Information will also amend a prior policy related to strategy transactions. Today, the Exchange requires members to designate on the trade ticket whether the trade involves a dividend,⁷ merger⁸, short stock interest,⁹ reversal or conversion,¹⁰ jelly roll¹¹ or box spread¹² strategy by inserting a code on the trade ticket¹³ or requesting Exchange staff on the trading floor to input the code into the trading

⁷ A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend.

⁸ A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

⁹ A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

¹⁰ Reversal and conversion strategies are transactions that employ calls and puts of the same strike price and the underlying stock. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.

¹¹ A jelly roll strategy is defined as transactions created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position.

¹² A box spread strategy is a strategy that 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.

¹³ 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.

system.¹⁴ This marking must occur on the day the order was entered to receive the benefit of any trading cap¹⁵ for which they may qualify.¹⁶ This proposed policy will enable members to make corrections after the trade date and still qualify for the strategy fee cap. The Exchange's proposed Policy for Amending Billing Information does not impact the Exchange's Regulatory group's actions with respect to the proper marking of trades. Members must comply with Exchange rules in properly marking their trades and may be subject to disciplinary action in the event they fail to comply with Exchange Rules.

The Exchange believes that the Policy for Amending Billing Information will promote consistency in the treatment of all corrections submitted to the Exchange.

Research Fee

The Exchange proposes to adopt a Research Fee of \$1,000 applicable to members submitting corrections applicable to strategy transactions. The Exchange would assess this fee for each transaction correction presented to the Exchange. Assessing a fee to members to correct errors related to the marking of strategy trades caused by the member will relieve the administrative burden on the Exchange associated with reviewing and validating these trade

¹⁴ The Exchange's trading system on the trading floor is the Floor Broker Management System or FBMS.

¹⁵ The Exchange offers members certain strategy caps at Section II of the Pricing Schedule. The buy and sell side of a transaction must originate from the Exchange floor to qualify for these caps. Also, reversal and conversion, jelly roll and box spread strategy executions are not included in the Monthly Strategy Cap for a Firm. Reversal and conversion, jelly roll and box spread strategy executions are included in the Monthly Firm Fee Cap. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions will be excluded from the Monthly Market Maker Cap. Firms are subject to a maximum fee of \$75,000 ("Monthly Firm Fee Cap").

¹⁶ See Securities Exchange Act Release No. 70850 (November 12, 2013), 78 FR 69164 (November 18, 2013) (SR-Phlx-2013-109) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Box Spread Strategies).

corrections. Correcting mismarked strategy transactions requires Exchange personnel to review errors and make adjustments to its billing processes to ensure the corrected trade is properly processed for billing. The Exchange believes that assessing a fee will promote increased accuracy in executing strategy transactions and proper marking of those trades among members who may wish to avoid the correction fee. The integrity of the audit trail is important to the Exchange and the fee will continue to reinforce the need to ensure that strategy trades are properly marked. The Research Fee will also compensate the Exchange for administrative resources utilized to research fees and promote accuracy for strategy transaction corrections.

Other Amendments

The Exchange proposes to remove a historical date from the Billing Dispute policy as the origination date of the policy is no longer relevant. The Exchange also proposes to amend the Table of Contents to properly reflect sections which have been revised in the Pricing Schedule. Finally, the Exchange proposes to add the letter “D” before the Remote Specialist Fee to identify that section in the Table of Contents.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act¹⁸ 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 further addresses its adoption of a Policy for Amending

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

Billing Information and Research Fee below.

Policy for Amending Billing Information

The Exchange's proposal to adopt a Policy for Amending Billing Information is reasonable because the corrections are related to member errors that are not yet ripe for treatment pursuant to the Billing Dispute Policy. This proposal will enable the Exchange to apply the proper pricing to each transaction in the event of an error. The Exchange believes that the Policy for Amending Billing Information will promote consistency in the treatment of all corrections submitted to the Exchange. Requiring members to support their corrections with documentation is reasonable to maintain the integrity of executed transactions on the Exchange by verifying that each trade should be corrected for billing purposes.

The Exchange's amendment to corrections related to strategy transactions is reasonable because the Exchange will price all qualifying strategy transactions uniformly according to the Pricing Schedule, regardless of whether an error occurred when the trade was initially submitted, provided the member submits a trade correction. The Exchange will validate all trade corrections and apply the appropriate fees, rebates and caps to the transaction. All members will be able to qualify for the strategy cap even in the event of an error. Members remain responsible to comply with Exchange rules and properly mark their trades or be subject to disciplinary action in the event they fail to comply with Exchange Rules. Also, the proposed Research Fee should continue to promote the consistent marking of strategy trades.

The Exchange's proposal to adopt a Policy for Amending Billing Information is equitable and not unfairly discriminatory because it will uniformly apply to all members. All members will be required to support their corrections with documentation. The Exchange's amendment to corrections related to strategy transactions is equitable and not unfairly discriminatory because

the Exchange's Policy for Amending Billing Information will uniformly apply to all members submitting corrections for strategy transactions. All strategy transactions will be uniformly assessed the pricing in the Pricing Schedule for all qualifying strategy transactions, regardless of whether an error occurred when the trade was initially submitted, provided the member submits a correction. All members will be able to qualify for the strategy cap even in the event of an error.

The Exchange's proposal to require members to submit corrections and billing disputes is reasonable because members should be responsible for all trades submitted to the Exchange and handling related corrections. The Exchange provides members with both daily and monthly fee reports in an effort to keep members apprised of executions and associated pricing. This practice also is intended to encourage members to review transactions so errors can be promptly identified. Errors identified prior to the invoice may be corrected pursuant to the Policy for Amending Billing Information. The Exchange's proposal to require members to submit corrections and billing disputes is equitable and not unfairly discriminatory because the Exchange has privity with its members and those members will uniformly be held responsible for all trades submitted to the Exchange and the handling of related corrections and billing disputes.

Research Fee

The Exchange's proposal to adopt a Research Fee of \$1,000 applicable to member submitting corrections related to strategy transactions is reasonable because the Exchange expends resources to review a correction submitted by members and believes this fee will compensate the Exchange. For example, Exchange staff validates the corrections to ensure the accuracy of the correction as it relates to a specific strategy and reviews its internal billing to correct its records to properly bill the corrected transaction. The Exchange believes that assessing a Research Fee will also promote proper marking of strategy transactions. The

Exchange believes that it is reasonable to only assess a Research Fee related to strategy transactions because these types of marking errors require Exchange staff intervention. Other types of marking errors may be handled at OCC. The Exchange believes assessing a Research Fee in the amount of \$1,000 is reasonable because the Exchange believes that the fee level is appropriate given the amount of Exchange resources expended to correct the error. Further the fee is not egregious and similar fee levels are assessed by the Exchange for failures to mark certain transactions.¹⁹

The Exchange's proposal to adopt a Research Fee of \$1,000 applicable to members submitting corrections related to strategy transactions is equitable and not unfairly discriminatory because the Exchange will uniformly assess this fee to all members submitting corrections related to strategy transactions. The Exchange believes that it is equitable and not unfairly discriminatory to only assess a Research Fee related to strategy transactions because the Exchange must intervene to correct the billing of these types of transactions when the member fails to mark a strategy transaction. Other types of information may be corrected at OCC and Exchange intervention is not required. The Exchange proposes this fee to recoup administrative costs associated with validating all trade corrections and applying the appropriate fees, rebates and caps to the transaction. The Exchange does not have the same administrative burdens with other types of corrections required by members with respect to executed transactions. The Exchange believes assessing a Research Fee in the amount of \$1,000 is equitable and not unfairly discriminatory because the Exchange would uniformly assess this fee to all members with strategy transaction corrections and this fee would serve to recoup the Exchange for the administrative time related to these corrections.

¹⁹ See Options Floor Procedure Advices and Order & Decorum Regulations in Section F. These fines range from \$250 to \$2,500. See F-1, F-2 and F-4.

Other Amendments

The Exchange's proposal to remove a historical date from the Billing Dispute policy, amend the Table of Contents to properly reflect sections, which have been revised, and add the letter "D" before the Remote Specialist Fee is reasonable, equitable and not unfairly discriminatory because the Exchange believes that removing unnecessary language, reflecting current sections and identifying sections in the Pricing Schedule brings clarity to Exchange's pricing and benefits market participants.

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 believes that the adoption of a Policy for Amending Billing Information does not impose an undue burden on inter-market competition because the Exchange believes that other Exchanges have policies related to trade corrections. The Exchange believes that the adoption of a Research Fee does not impose an undue burden on inter-market competition because the purpose of the fee is to recover costs expended by the Exchange to review corrections related to strategy transactions.

Policy for Amending Billing Information

The Exchange's proposal to adopt a Policy for Amending Billing Information, which would apply to billing corrections submitted to the Exchange after trade date and prior to the issuance of an invoice, does not impose an undue burden on intra-market competition because the policy will uniformly apply to all members. All members will be required to support their trade corrections by providing documentation. Only members will be permitted to submit corrections and billing disputes.

The Exchange's amendment to the Policy for Amending Billing Information related to strategy transactions does not impose an undue burden on intra-market competition because all members will be able to submit errors related to strategy transactions for correction. All members will be able to qualify for the strategy cap even in the event of an error. These members will be assessed a Research Fee. The Exchange's proposal to require members to submit corrections and billing disputes does not impose an undue burden on intra-market competition because members have privity with the Exchange and those members will uniformly be held responsible for all trades submitted to the Exchange and the handling of related corrections and billing disputes.

Research Fee

The Exchange's proposal to adopt a Research Fee of \$1,000 applicable to members submitting corrections related to strategy transactions does not impose an undue burden on intra-market competition because the purpose of the fee is to recoup costs associated with expending Exchange resources to review corrections submitted by members who inadvertently mismark or neglect to mark a strategy transaction. The Exchange will uniformly assess this fee to all members submitting strategy transaction corrections.

The Exchange's proposal to only assess a Research Fee related to strategy transactions does not impose an undue burden on intra-market competition because the Exchange must intervene to correct the billing of these types of transactions when the member fails to mark a strategy transaction. Other types of information may be corrected at OCC and Exchange intervention is not required. The Exchange's proposal to assess a Research Fee in the amount of \$1,000 does not impose an undue burden on intra-market competition because the Exchange

would uniformly assess this fee to all members with strategy transaction corrections and this fee would serve to recoup the Exchange for the administrative time related to these corrections.

Other Amendments

The Exchange's proposal to remove a historical date from the Billing Dispute policy, amend the Table of Contents to properly reflect sections, which have been revised, and add the letter "D" before the Remote Specialist Fee does not impose an undue burden on intra-market competition because the proposed changes are non-substantive.

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.²⁰

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:

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2016-09 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2016-09. 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-2016-09, 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.²¹

Brent J. Fields
Secretary

²¹ 17 CFR 200.30-3(a)(12).