

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77577; File No. SR-Phlx-2016-42)

April 11, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Qualified Contingent Cross Rebates and Certain Floor Options Transaction Charges

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 March 28, 2016, NASDAQ 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 amend the Exchange’s Pricing Schedule at Section II, entitled “Multiply Listed Options Fees.” Specifically, the Exchange is proposing to amend the Qualified Contingent Cross (“QCC”) rebates and certain floor Options Transaction Charges.

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

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

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

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 amend the Exchange’s Pricing Schedule at Section II, entitled “Multiply Listed Options Fees.” Specifically, the Exchange is proposing to amend QCC rebates and certain floor Options Transaction Charges. Each change will be described below in more detail.

Section II – QCC Rebates

Today, the Exchange assesses a QCC Transaction Fee of \$0.20 per contract to a Specialist,<sup>3</sup> Market Maker,<sup>4</sup> Professional,<sup>5</sup> Firm<sup>6</sup> and Broker-Dealer.<sup>7</sup> The Exchange also pays

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<sup>3</sup> A “Specialist” is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>4</sup> The term “Market Maker” includes Registered Options Traders (“ROT”). See Exchange Rule 1014 (b)(i) and (ii). A ROT includes a Streaming Quote Trader or “SQT,” a Remote Streaming Quote Trader or “RSQT” and a Non-SQT, which by definition is neither a SQT nor a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member [sic] of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. An SQT is a ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. An SQT may only trade in a market making capacity in classes of options in which the SQT is assigned. See Rule 1014(b)(11)(A) [sic]. An RSQT is an ROT that is a member affiliated with and [sic] Remote Streaming Quote Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Specialist upon Exchange approval. See Rule 1014(ii)(B) [sic].

<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

rebates on QCC Orders based on the following five tier rebate schedule:

### QCC Rebate Schedule

<b>Tier</b>	<b>Threshold</b>	<b>Rebate per Contract</b>
Tier 1	0 to 299,999 contracts in a month	\$0.00
Tier 2	300,000 to 499,999 contracts in a month	\$0.07
Tier 3	500,000 to 699,999 contracts in a month	\$0.08
Tier 4	700,000 to 999,999 contracts in a month	\$0.09
Tier 5	Over 1,000,000 contracts in a month	\$0.11

Rebates are paid for all qualifying executed QCC Orders, as defined in Rule 1080(o)<sup>8</sup> and Floor QCC Orders, as defined in Rule 1064(e),<sup>9</sup> except where the transaction is either: (i)

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during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

<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> A QCC Order is comprised of an order to buy or sell at least 1000 contracts [sic] 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 Regulation NMS).

<sup>9</sup> A Floor QCC Order must: (i) be for at least 1,000 contracts [sic]; (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 [sic], a Floor QCC Order must be for 1,000

Customer-to-Customer; or (ii) a dividend, merger, short stock interest or reversal or conversion strategy execution.<sup>10</sup> The maximum QCC Rebate to be paid in a given month will not exceed \$450,000.<sup>11</sup>

The Exchange proposes to amend the QCC rebate schedule to add a new tier to create a six tier rebate schedule and amend the existing tiers. The proposed QCC rebate schedule would be as follows:

### QCC Rebate Schedule

<b>Tier</b>	<b>Threshold</b>	<b>Rebate per Contract</b>
Tier 1	0 to 99,999 contracts in a month	\$0.00
Tier 2	100,000 to 299,999 contracts in a month	\$0.05
Tier 3	300,000 to 499,999 contracts in a month	\$0.07
Tier 4	500,000 to 699,999 contracts in a month	\$0.08
Tier 5	700,000 to 999,999 contracts in a month	\$0.09
Tier 6	Over 1,000,000 contracts in a month	\$0.11

Tier 1 does not currently pay a QCC rebate between 0 and 299,999 contracts in a month. The Exchange will continue to pay no rebate for Tier 1, however the Exchange proposes to lower the volume threshold to between 0 and 99,999 contracts in month. The Exchange proposes a new Tier 2 QCC rebate which would pay a QCC rebate of \$0.05 per contract for volume between 100,000 and 299,999 contracts in a month. The remainder of the QCC rebate tiers would be renumbered. Current Tier 2 would be renumbered as Tier 3 and would continue to pay a rebate of \$0.07 per contract for volume between 300,000 and 499,999 contracts in a month. Current

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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>10</sup> See Section II of the Pricing Schedule.

<sup>11</sup> Id.

Tier 3 would be renumbered to Tier 4 and would continue to pay a QCC rebate of \$0.08 per contract for volume between 500,000 and 699,999. Current Tier 4 would be renumbered as Tier 5 and would continue to pay a \$0.09 per contract rebate for volume between 700,000 and 999,999 contracts in a month. Finally, current Tier 5 would be renumbered as Tier 6 and would continue to pay a QCC rebate of \$0.11 per contract for volume over 1,000,000 contracts in a month.

The Exchange believes that its proposed amendments to the QCC rebates will provide an opportunity for additional members to receive the rebate. The Exchange's proposal permits volume over 99,999 to receive a rebate.

#### Section II – Multiply Listed Options Fees

The Exchange proposes to amend the current Floor Options Transaction Charges in Section II of the Exchange's Pricing Schedule in both Penny Pilot and non-Penny Pilot Options from \$0.30 to \$0.35 per contract for Specialists and Market Makers. The Exchange believes that these fees remain competitive with fees currently assessed today on Phlx.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>13</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 Commission and the courts have repeatedly expressed their preference for

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4) and (5).

competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>14</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission (“NetCoalition”)<sup>15</sup> the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>16</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>17</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>18</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the

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<sup>14</sup> Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) [sic] (“Regulation NMS Adopting Release”).

<sup>15</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>16</sup> See NetCoalition, at 534.

<sup>17</sup> Id. at 537.

<sup>18</sup> Id. at 539 (quoting ArcaBook Order, 73 FR at 74782-74783 [sic]).

options markets.

### Section II – QCC Rebates

The Exchange believes that it is reasonable to add a new QCC rebate tier and amend the current rebate tiers to lower the Tier 1 volume threshold and start paying a rebate of \$0.05 per contract for volume between 100,000 to 299,999 contracts per month. The Exchange believes that paying a QCC rebate starting at 100,000 contracts per month will attract additional QCC volume on the Exchange. While the other rebate tiers are not being amended and simply renumbered (current Tiers 2-6), the Exchange believes these rebate tiers will continue to attract QCC volume on the Exchange.

The Exchange believes that adding a new QCC rebate tier and amending the current rebate tiers to lower the Tier 1 volume threshold and start paying a rebate of \$0.05 per contract for volume between 100,000 to 299,999 contracts per month is equitable and not unfairly discriminatory because all market participants are eligible to transact QCC Orders and receive the rebates.

### Section II – Multiply Listed Options Fees

The Exchange's proposal to amend its Floor Options Transaction Charges to increase Penny and non-Penny Pilot Options Transaction Charges for Specialists and Market Makers is reasonable because the proposed fees are within the range of other fees in Section II of the Pricing Schedule.<sup>19</sup> Also, Specialists and Market Makers pay a Marketing Fee<sup>20</sup> on electronic

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<sup>19</sup> Section II Options Transaction Charges for Penny Pilot and non-Penny Pilot Options range from \$0.22 to \$0.75 per contract for Non-Customers.

<sup>20</sup> The Marketing Fee is assessed on Specialists and Market Makers when they elect to participate in the Marketing program. The fees are assessed on electronically-delivered Customer orders. The fees are available to be disbursed by the Exchange according to the instructions of the Specialist or Market Maker to order flow providers who are members or member organizations who submit, as agent, Customer orders to the

orders but do not pay a Marketing Fee when transacting non-electronic orders, which is why the floor transaction charges are higher as compared to electronic options transaction charges for Specialists and Market Makers.

The Exchange's proposal to amend its Floor Options Transaction Charges to increase Penny Options and non-Penny Pilot Options Transaction Charges for Specialists and Market Makers is equitable and not unfairly discriminatory because Specialists and Market Makers have a time and place advantage on the trading floor with respect to orders, unlike other market participants. A Professional, Broker-Dealer, or a Firm would necessarily require a floor broker to represent their trading interest on the trading floor as compared to a Specialist or Market Maker that could directly transact such orders on the trading floor. Further, the Exchange believes that to attract orders from a Professional, Broker-Dealer or a Firm, via a floor broker, the rates must be competitive with rates at other trading floors.

Therefore, the Exchange would continue to assess a Professional, Broker-Dealer and a Firm a Floor Options Transaction Charge for Penny Pilot Options and Non-Penny Pilot Options of \$0.25 per contract. Customers are not assessed an Options Transaction Charge because Customer order flow is unique. 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.

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Exchange through a member or member organization who is acting as agent for those customer orders. Any excess funds billed but not utilized by the Specialist or Market Maker are carried forward unless the Specialist or Market Maker elects to have those funds rebated on a pro rata basis, reflected as a credit on the monthly invoices. At the end of each calendar quarter, the Exchange calculates the amount of excess funds from the previous quarter and subsequently rebates excess funds on a pro-rata basis to the applicable Specialist or Market Maker who paid into that pool of funds. See Section II of the Pricing Schedule.



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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the charges assessed and credits available to member firms for execution of securities in securities of all three Tapes do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues.

The Exchange believes that its proposed amendments to the QCC rebate tiers and increase to the Specialist and Market Maker floor options transaction charges do not impose an undue burden on inter-market competition because the QCC rebates and Specialist and Market Maker fees remain competitive with rebates and fees offered on other options markets.<sup>21</sup> In sum,

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<sup>21</sup> The International Securities Exchange LLC ("ISE") pays QCC rebates ranging from \$0.00 to \$0.011 per contract. See ISE's Schedule of Fees. Also, the Chicago Board Options Exchange, Incorporated ("CBOE") assess market-makers, DPMs and LLMs manual fees based on a sliding scale which range from \$0.03 to \$0.23 per contract depending on certain volume thresholds. See CBOE's Fees Schedule.

if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

The Exchange believes that adding a new QCC rebate tier and amending the current rebate tiers to lower the Tier 1 volume threshold and start paying a rebate of \$0.05 per contract for volume between 100,000 to 299,999 contracts per month does not impose an undue burden on intra-market competition because all market participants are eligible to transact QCC Orders and receive a rebate.

The Exchange's proposal to amend its Floor Options Transaction Charges to increase Penny Options and non-Penny Pilot Options Transaction Charges for Specialists and Market Makers does not impose an undue burden on intra-market competition because Specialists and Market Makers have a time and place advantage on the trading floor with respect to orders, unlike other market participants. Unlike other market participants, a Specialist or Market Maker may directly transact orders on the trading floor. Further, unlike Specialist or Market Maker electronic orders, which are subject to a Marketing Fee, Specialist or Market Maker floor orders are not subject to a Marketing Fee.

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>22</sup>

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<sup>22</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2016-42 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-2016-42. 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-2016-42 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>23</sup>

Robert W. Errett  
Deputy Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).