

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77908; File No. SR-Phlx-2016-59)

May 25, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to PIXL Pricing

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 May 11, 2016, NASDAQ PHLX LLC (“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 Section IV, Part A of the Pricing Schedule entitled “PIXL Pricing.”

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend the PIXL³ pricing located in the Pricing Schedule at Section IV, Part A. The Exchange amends the PIXL Pricing to incentivize market participants to direct more PIXL Orders to Phlx.

Today, the Exchange assesses a \$0.07 per contract Initiating Order Fee. If the member or member organization qualifies for the Tier 4 or 5 Customer Rebate⁴ in Section B, the member or member organization will be assessed a discounted Initiating Order Fee of \$0.05 per contract for

³ PIXLSM is the Exchange’s price improvement mechanism known as Price Improvement XL or PIXL. A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (“PIXL Order”) against principal interest or against any other order (except as provided in Rule 1080(n)(i)(F) it represents as agent (“Initiating Order”), provided it submits the PIXL order for electronic execution into the PIXL Auction pursuant to Rule 1080. See Exchange Rule 1080(n).

⁴ Currently, the Exchange has a Customer Rebate Program consisting of five tiers that pay Customer rebates on three Categories, A, B and C of transactions. A Phlx member qualifies for a certain rebate tier based on the percentage of total national customer volume in multiply-listed options that it transacts monthly on Phlx. The Exchange calculates Customer volume in Multiply Listed Options by totaling electronically-delivered and executed volume, excluding volume associated with electronic Qualified Contingent Cross (“QCC”) Orders, as defined in Exchange Rule 1080(o). In calculating electronically-delivered and executed Customer volume in Multiply Listed Options, the numerator of the equation includes all electronically-delivered and executed Customer volume in Multiply Listed Options. The denominator of that equation includes national customer volume in multiply-listed equity and ETF options volume, excluding SPY. See Section B of the Pricing Schedule.

Simple PIXL Orders and \$0.03 per contract for Complex⁵ PIXL Orders. The Exchange is proposing to make three changes to the PIXL Pricing.

Pricing Change Number 1

The Exchange proposes to assess a \$0.05 per contract discounted Initiating Order Fee to members and member organizations that qualify for the Tier 4 or 5 Customer Rebate in Section B, regardless of whether the order is a Simple or Complex PIXL Order. The Initiating Order Fee for Simple PIXL Orders would therefore be assessed the same lower rate when the member or member organization would qualify for this reduced fee. The Exchange proposes to increase the discounted Complex PIXL Initiating Order Fee from \$0.03 to \$0.05 per contract provided the member or member organization qualifies for Tier 4 or 5 of the Customer Rebate in Section B.

Pricing Change Number 2

Additionally, the Exchange proposes a new incentive for members or member organizations that deliver equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and exchange-traded fund (“ETF”) option classes, excluding SPY options,⁶ in a given month to lower their Initiating Order Fee to \$0.00 per contract for Complex PIXL Orders. This proposal will offer members submitting Complex PIXL Orders the

⁵ 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 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 ETF coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .07.

⁶ Options overlying Standard and Poor's Depository Receipts/SPDRs (“SPY”) are based on the SPDR exchange-traded fund, which is designed to track the performance of the S&P 500 Index.

opportunity to pay no Initiating Order Fee instead of a \$0.05 per contract⁷ discounted Complex PIXL Initiating Order Fee if the member qualifies for the incentive.

Pricing Change Number 3

The Exchange also proposes to offer this new incentive to members or member organizations under Common Ownership.⁸ Today, any member or member organization under Common Ownership with another member or member organization that qualifies for a Tier 4 or 5 Customer Rebate in Section B will be assessed a discounted PIXL Initiating Order Fee of \$0.05 per contract for Simple PIXL Orders and \$0.03 per contract for Complex PIXL Orders. The Exchange proposes that any member or member organization under Common Ownership with another member or member organization that executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month will be assessed a discounted PIXL Initiating Order Fee of \$0.05 for Simple PIXL Orders and \$0.00 for Complex PIXL Orders. The Exchange also proposes to increase the discounted Complex PIXL Initiating Order Fee for members or member organizations under Common Ownership that qualify for Customer Rebate Tier 4 or 5 in Section B. With this proposal, any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier 4 or 5 in Section B will be assessed a discounted Complex PIXL Initiating Order Fee of \$0.05 per contract.

⁷ Today the Complex PIXL Initiating Order Fee for members and member organizations that qualify for the Tier 4 or 5 Customer Rebate in Section B is \$0.03 per contract. This proposal increases that fee to \$0.05 per contract.

⁸ The term “Common Ownership” shall mean members or member organizations under 75% common ownership or control.

Despite the increase to the discounted Complex PIXL Initiating Order Fee for members and member organizations that qualify for a Customer Rebate Tier 4 or 5 in Section B, the Exchange believes that the increased discounted rate will continue to encourage members to direct more Complex PIXL Orders to the Exchange.⁹

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ 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 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.”¹²

⁹ Currently, the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order will be reduced to \$0.00 if the Customer PIXL Order is greater than 399 contracts. The Exchange is not amending this provision.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Likewise, in NetCoalition v. Securities and Exchange Commission¹³ (“NetCoalition”) 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.¹⁴ 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.”¹⁵

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’”¹⁶ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Pricing Change Number 1

The Exchange’s proposal to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations that qualify for Tier 4 or 5 of the Customer Rebate in Section B from \$0.03 to \$0.05 per contract is reasonable because the Exchange assesses this discounted same [sic] rate for the Simple PIXL Initiating Order Fee. Furthermore, the Exchange believes that this fee is reasonable because it continues to be lower than the \$0.07 per contract

¹³ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁴ See NetCoalition, at 534 - 535.

¹⁵ Id. at 537.

¹⁶ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

Initiating Order Fee for members and member organizations that do not qualify for Tier 4 or 5 of the Customer Rebate in Section B. Finally, the Exchange is offering members and member organizations an opportunity to lower the Complex PIXL Initiating Order Fee to \$0.00 per contract provided the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF option classes, excluding SPY options, in a given month.

The Exchange's proposal to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations that qualify for Tier 4 or 5 of the Customer Rebate in Section B from \$0.03 to \$0.05 per contract is equitable and not unfairly discriminatory because the Exchange will apply the proposed fees in a uniform manner to all market participants who qualify for the discounted rate. Further, all market participants are eligible to earn Customer Rebates, transact Complex PIXL Orders and participate in a PIXL Auction.

Pricing Change Number 2

The Exchange's proposal to offer members and member organizations an opportunity to pay no Complex PIXL Initiating Order Fee provided they transact equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF option classes, excluding SPY options, in a given month is reasonable because it will encourage market participants to transact Customer volume as well as a greater number of Complex PIXL Orders on the Exchange. Today, members and member organizations may lower their Complex PIXL Order Initiating Order Fees by qualifying for Tiers 4¹⁷ or 5¹⁸ of the Customer Rebate in Section B. In order to qualify for Section B Customer Rebate Tiers 4 or 5 a member or member organization is

¹⁷ Tier 4 requires member and member organizations to transact above 1.60% - 2.50% of National Customer Volume in Multiply-Listed Equity and ETF Options.

¹⁸ Tier 5 requires member and member organizations to transact above 2.50% of National Customer Volume in Multiply-Listed Equity and ETF Options.

required to transact a certain percentage of total National Customer Volume (above 1.60%) in Multiply-Listed options in a month on Phlx to receive a lower Complex PIXL Initiating Order Fee of \$0.05¹⁹ as compared to the Initiating Order Fee of \$0.07 per contract. With this proposal the Exchange offers members and member organizations an opportunity to pay no Initiating Order Fee for Complex PIXL Orders provided they deliver equal to order [sic] greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month is transacted on Phlx [sic]. The Exchange seeks to encourage market participants to increase the amount of Customer order flow that is directed to Phlx by offering the opportunity to pay no Complex PIXL Initiating Order Fee. In order to qualify for this new incentive, a greater amount of Customer volume is necessary to be transacted than the volume currently required to qualify for the Customer Rebate Tiers 4 and 5 in Section B.

The Exchange believes that members and member organizations will direct a greater amount of Customer liquidity to Phlx to qualify for a Complex PIXL Initiating Order Fee of \$0.00 per contract. 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. The Exchange's proposal to offer member and member organizations an opportunity to pay no Complex PIXL Initiating Order Fee provided they transact equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month is

¹⁹ Today the Complex PIXL Initiating Order Fee for members and member organizations that qualify for the Tier 4 or 5 Customer Rebate in Section B is \$0.03 per contract. This proposal increases that fee to \$0.05 per contract.

equitable and not unfairly discriminatory because the opportunity to pay no Complex PIXL Initiating Order Fee is available to all market participants. In addition, all market participants are eligible to earn Customer Rebates, transact Complex PIXL Orders and participate in a PIXL Auction.

Pricing Change Number 3

The Exchange's proposal to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations under Common Ownership that qualify for Tier 4 or 5 of the Customer Rebate in Section B from \$0.03 to \$0.05 per contract is reasonable for the same reasons explained herein. It is also reasonable to offer member and member organizations under Common Ownership an opportunity to pay no Complex PIXL Order Initiating Order Fee provided the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month for the same reasons explained herein. The Exchange believes that applying the same pricing to members under Common Ownership as wholly-owned entities avoids disparate treatment of members that have divided their various business activities between separate corporate entities as compared to members that operate those business activities within a single corporate entity.

The Exchange's proposal to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations under Common Ownership that qualify for Tier 4 or 5 of the Customer Rebate in Section B from \$0.03 to \$0.05 per contract is equitable and not unfairly discriminatory for the same reasons explained herein. It is also equitable and not unfairly discriminatory to offer member and member organizations under Common Ownership an opportunity to pay no Complex PIXL Initiating Order Fee provided the member or member

organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed Equity and ETF options classes, excluding SPY options, in a given month for the same reasons explained herein. The Exchange believes that its proposed pricing is equitable and not unfairly discriminatory because it permits both wholly owned and common control members and member organizations to be subject to the same pricing for PIXL.

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, that the degree to which fee changes in this market may impose any burden on inter-market competition is extremely limited.

Pricing Change Number 1

The Exchange believes that increasing the discounted Complex PIXL Initiating Order Fee for members and member organizations that qualify for Tier 4 or 5 of the Customer Rebate in Section B from \$0.03 to \$0.05 per contract does not create an undue burden on intra-market competition because the Exchange will apply the proposed fees in a uniform manner to all market participants who qualify for the discounted rate. All market participants are eligible to earn Customer Rebates, transact Complex PIXL Orders and participate in a PIXL auction. Also,

encouraging 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.

Pricing Change Number 2

The Exchange believes that it does not create an undue burden on intra-market competition to offer member and member organizations an opportunity to lower the Complex PIXL Initiating Order Fee to \$0.00 per contract provided the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month because all market participants are eligible to earn Customer Rebates, transact Complex PIXL Orders and participate in a PIXL auction. Also, encouraging 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.

Pricing Change Number 3

The Exchange's proposal to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations under Common Ownership that qualify for Tier 4 or 5 of the Customer Rebate in Section B from \$0.03 to \$0.05 per contract and the proposal to lower the Complex PIXL Initiating Order Fee to \$0.00 per contract provided the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month do not create an

undue burden on intra-market competition because the pricing subjects both wholly owned and common control members and member organizations to the same pricing for PIXL.

The Exchange does not believe that the proposed rule changes to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations, including those under Common Ownership, that qualify for Tier 4 or 5 of the Customer Rebate in Section B from \$0.03 to \$0.05 per contract and offer a new incentive to reduce the Complex PIXL Initiating Order Fee to \$0.00 per contract, including those members under Common Ownership, will impose any burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act because all market participants are eligible to earn Customer Rebates, transact Complex PIXL Orders and participate in a PIXL auction. Also, encouraging 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.

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

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

(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-2016-59](#) 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-2016-59](#). 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-2016-59](#) 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).