

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82019; File No. SR-Phlx-2017-91)

November 6, 2017

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Pricing Schedule Section II, Entitled Multiply Listed Options Fees

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 November 1, 2017, Nasdaq PHLX LLC (“Phlx” or “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 amend the Pricing Schedule, Section II, entitled “Multiply Listed Options Fees,”³ as further discussed below.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqphlx.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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ This includes options overlying equities, ETFs, ETNs and indexes which are multiply listed.

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 Section II of the Exchange's Pricing Schedule to increase the assessment for select Firm⁴ electronic simple orders.

As set forth in Section II of the Pricing Schedule, the Exchange currently charges a Penny Pilot Options Transaction Charge for electronic simple orders that is \$0.48 per contract for Professional,⁵ Broker-Dealer⁶ and Firm orders, \$0.22 per contract for Specialist⁷ and Market Maker⁸ orders, and \$0.00 for Customer⁹ orders. In addition, the Exchange charges a reduced

⁴ The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

⁵ The term "Professional" applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(14) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Pricing Schedule, Preface.

⁶ The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Pricing Schedule, Preface.

⁷ The term "Specialist" applies to transactions for the account of a Specialist (as defined in Exchange Rule 1020(a)). A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501. See Pricing Schedule, Preface.

⁸ For purposes of the Pricing Schedule, the term "Market Maker" will be utilized to describe the fees and rebates applicable to Registered Options Traders (as defined in Exchange Rule 1014(b)), Streaming Quote Traders (as defined in Exchange Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (as defined in Exchange Rule 1014(b)(ii)(B)). See Pricing Schedule, Preface.

Penny Pilot Options Transaction Charge for Firm electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF (hereinafter, “Select Symbols”) that is \$0.37 per contract (reduced from \$0.48 per contract).¹⁰ The reduced fee for Firm electronic simple orders in Select Symbols (such reduced fee, the “Select Firm Fee”) is to incentivize Firms to transact more volume in Select Symbols, thereby attracting more order flow to the Exchange.

The Exchange now proposes to increase the \$0.37 per contract Select Firm Fee to raise revenue for the Exchange and help defray costs. As proposed, note 1 in Section II of the Pricing Schedule will read, “Firm electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF will be assessed \$0.45 per contract.”

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes its proposal to increase the Select Firm Fee from \$0.37 to \$0.45 per contract is reasonable because the proposed increase will help defray costs, and remains lower than the \$0.48 per contract Penny Pilot Options Transaction Charge assessed to all other

⁹ The term “Customer” applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of a broker or dealer or for the account of a “Professional” (as that term is defined in Rule 1000(b)(14)). See Pricing Schedule, Preface.

¹⁰ See note 1 in Section II of the Pricing Schedule. Select symbols represent high volume Penny Pilot options listed on the Exchange.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

Firm electronic simple orders.¹³ Furthermore, the Exchange notes that the proposed fee remains competitive with the fees of another options market.¹⁴ Accordingly, the Exchange believes that the proposed \$0.45 per contract fee for Firm electronic simple orders in Select Symbols, which represent high volume Penny Pilot options listed on the Exchange, will continue to be competitive and attract order flow to the Exchange, to the benefit of all market participants.

In addition, the Exchange believes the proposed \$0.45 per contract Select Firm Fee is equitable and not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. For the reasons discussed above, the proposed fee provides an incentive for Firms to transact order flow on the Exchange, which order flow brings increased liquidity to the Exchange for the benefit of all Exchange participants. To the extent the purpose of the proposed Select Firm Fee is achieved, all market participants should benefit from the improved market liquidity.

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. As discussed above, the Exchange believes that the proposed Select Firm Fee remains competitive and will continue to attract order flow to the Exchange. 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

¹³ See Pricing Schedule, Section II.

¹⁴ See, e.g., MIAX Options Fee Schedule at: https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_10112017.pdf.

fees to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2017-91 on the subject line.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-91. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-Phlx-2017-91 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.¹⁶

Eduardo A. Aleman
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).