

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70472; File No. SR-PHLX-2013-93)

September 23, 2013

Self-Regulatory Organizations; The NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make a Minor Modification to Pricing Incentive Programs

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 September 10, 2013, 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 and II 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 the Substance of the Proposed Rule Change

The Exchange proposes to make a minor modification to pricing incentive programs under PHLX’s schedule of fees and credits applicable to options trading on PHLX. Specifically, PHLX is proposing to exclude from volume-based pricing calculations any trading day on which PHLX is closed for trading due to early closing or a market-wide trading halt. This exclusion exists today for the trading of equities on PSX, the equities trading facility of PHLX.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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

PSX, the PHLX facility for trading equities, offers pricing for the trading of equities that is based on average daily volume of trading. The applicable fee schedule for equities trading on PSX contains language excluding from such volume calculations any day on which the market is not open the entire trading day. PHLX Pricing Schedule, Section VIII, entitled "Order Routing and Execution", footnote to subsection (a)(4) states that "For purposes of determining average daily volume hereunder, any day that the market is not open for the entire trading day will be excluded from such calculation." As a result, when trading ends early, as for trading days preceding certain federal holidays, or when there is a material market-wide disruption, PHLX excludes that day from the calculation of average daily volume.

The PHLX pricing schedule for options also contains pricing programs based on average daily volume. PHLX has determined to make this practice uniform for both equities and options trading on PHLX by moving the relevant language to the preamble of the PHLX Fee Schedule. In other words, for purposes of calculating any pricing based on average daily volumes for both equities and options trading any day that the market is not open for the entire trading day should

be excluded from such calculation. As it currently does for equities, this formulation would exclude days on which the market closes early for holiday observance. It would also exclude days where PHLX declares a trading halt in all securities or honors a market-wide trading halt declared by another market. This would apply to the market-wide trading halt of approximately three hours on August 22, 2013, which PHLX plans to exclude from Customer Rebate Tiers for the month of August.

This change will affect several fees described in PHLX Pricing Schedule, Section B, which contains pricing incentive programs that are designed to encourage member participation in PHLX options trading by increasing rebates or reducing fees for firms that trade on PHLX in increasingly higher volumes. For example, PHLX currently has four Customer Rebate Tiers by which it determines the rebate per share for Customer³ orders in Multiply Listed Options (including SPY) that are electronically-delivered and executed. The Customer Rebate Tier thresholds are based upon a percentage of national volume of Customer Orders in certain options on a monthly basis. The rebates range from \$0.00 to \$0.15 per contract for Simple Orders⁴ and from \$0.00 to \$0.17 per contract for Complex Orders as follows⁵

³ 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 broker or dealer or for the account of a “Professional” (as that term is defined in Rule 1000(b)(14)).

⁴ These “Category A Rebates” are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest, except in the case of Customer PIXL Orders that are greater than 999 contracts. All Customer PIXL Orders that are greater than 999 contracts will be paid a rebate regardless of the contra-party to the transaction.

⁵ These “Category B Rebates” are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Complex Orders in Section II

Customer Rebate Tiers	Percentage Thresholds of National Customer Volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options (Monthly)	Category	
		A	B
Tier 1	0.00% - 0.75%	\$0.00	\$0.00
Tier 2	Above 0.75% - 1.60%	\$0.12	\$0.17
Tier 3	Above 1.60% - 2.60%	\$0.14	\$0.17
Tier 4	Above 2.60%	\$0.15	\$0.17

If the Exchange did not exclude aberrant low volume days when calculating ADV for the month, as a result of the decreased trading volume, the numerator for the calculation (e.g., trading volume) would be correspondingly lower, but the denominator for the threshold calculations (e.g., the number of trading days) would not be decreased. This would result in an effective cost increase.

[sic] Addition to the Customer Rebate Tiers, the proposed change will also impact additional volume based options pricing related to the Electronic Firm Fee Discount⁶, the QCC

symbols that execute against non-Initiating Order interest, except in the case of Customer PIXL Complex Orders that are greater than 999 contracts. All Customer PIXL Complex Orders that are greater than 999 contracts will be paid a rebate regardless of the counterparty to the transaction.

⁶ Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options are reduced to \$0.17 per contract for a given month provided that a Firm has volume greater than 500,000 electronically-delivered contracts in a month ("Electronic Firm Fee Discount"). The Electronic Firm Fee Discount applies per member organization when such members are trading in their own proprietary account.

Rebate Schedule⁷ and a discount related to PIXL Initiating Orders (Section II)⁸ The proposed change does not impact the calculation of fees and rebated [sic] set forth under Section VIII., Order Routing and Execution, subsection (a)(1); the exclusion currently applies to those fees and it will continue to apply unchanged. Nor does the proposal does not [sic] apply to other transaction fees or rebates that do not include an average daily volume component.

Absent the authority to exclude days that the market is not open for the entire trading day, members will experience an effective increase in fees or decrease in rebates. The artificially low volumes of trading on such days reduce the average daily activity of PHLX members both daily and monthly. Accordingly, excluding such days from the monthly calculation will diminish the likelihood of an effective increase in the cost of trading on PHLX, a result that is unintended and undesirable to PHLX and to PHLX members.

⁷ The QCC Rebate Schedule comprises 5 tiers as follows: Tier 1 (0 to 299,999 contracts in a month) receives \$0.00 rebate per contract; Tier 2 (300,000 to 499,999 contracts in a month) receives \$0.07 rebate per contract; Tier 3 (500,000 to 699,999 contracts in a month) receives \$0.08 rebate per contract; Tier 4 (700,000 to 999,999 contracts in a month) receives \$0.09 rebate per contract; and Tier 5 (Over 1,000,000 contracts in a month) receives \$0.11 rebate per contract. The maximum QCC Rebate to be paid in a given month will not exceed \$375,000.

⁸ The PIXL Initiating Order (Section II) pricing is as follows: \$0.07 per contract or \$0.05 per contract if Customer Rebate Program Threshold Volume defined in Section B is greater than 100,000 contracts per day in a month. Any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier discount in Section B will receive the PIXL Initiating Order discount as described above. 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 999 contracts.

2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ 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 PHLX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

PHLX believes that the proposed change provides for equitable and reasonable allocation of fees because it simply extends to options trading a rule that currently applies in equities trading. Moreover, it is equitable and reasonable to eliminate from the calculation days on which the market is not open the entire trading day because it preserves PHLX's full intent behind adopting volume-based pricing. The proposed change is non-discriminatory because it applies equally to all members and to all volume tiers on all asset classes traded on PHLX. PHLX will continue to monitor the operation of the proposed rule change and, in the event that PHLX identifies a disparate impact on one or another volume tier in the future, PHLX may determine to modify that volume tier via an additional proposed rule change.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. PHLX 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

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, PHLX 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, PHLX believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

PHLX does not believe the proposed rule change will have an adverse impact on competition because there has been no adverse impact from imposing this rule in the context of equities trading. Moreover, in this instance, the proposed rule change should not impact competition because it merely preserves the full intent of PHLX's already-filed prices, which have not been deemed inconsistent with the Exchange Act or been found to impose an undue burden on competition. Moreover, the proposed rule change regarding days on which the market is not open the entire trading day will result in an effective reduction of fees or increase in rebates such that the total cost of trading on PHLX should decline. This is evidence that a proposed rule change is pro-competitive rather than anti-competitive.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver will allow the Exchange to immediately implement the proposed change, thereby reducing the potential for confusion among member organizations and the public about how the Exchange will calculate thresholds related to billing for activity on the Exchange during August 2013. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁵

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change 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-2013-93 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-PHLX-2013-93. 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

¹⁶ 15 U.S.C. 78s(b)(2)(B).

available for website viewing and printing in the Commission's Public Reference Room 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-2013-93, 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).