

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72094; File No. SR-Phlx-2014-28)

May 5, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to JBO Orders

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 1, 2014, 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, 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 its Pricing Schedule to assess joint back office (“JBO”)³ participants pricing the same as Broker-Dealers⁴ and require JBO participants to utilize a new origin code to identify JBO orders.

The Exchange proposes that the amendments become operative on July 1, 2014.

The text of the proposed rule change is available on the Exchange’s website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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.

³ A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer (“JBO Broker”) subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System. See also Exchange Rule 703.

⁴ The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

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

The Exchange proposes to introduce a new origin code to its Pricing Schedule which will be used to indicate orders for a JBO account to be cleared into the Firm range at The Options Clearing Corporation ("OCC") for purposes of pricing only. Further, the Exchange proposes to assess fees and pay rebates to JBO Orders the same as Broker-Dealers.

Currently, JBO orders clear in the Firm⁵ range at OCC as do Firm orders. The Exchange is proposing to introduce an origin code for members and member organizations to identify orders for a JBO account. Today, the Exchange requires members and member organizations to notify the Exchange in writing and indicate which accounts are used to segregate orders of JBO participants from other Firm orders.⁶

The origin code will simplify the process of identifying JBO orders for purposes of pricing only. Members and member organizations would be required to mark their JBO orders in accordance with the technical specifications definitions which are provided by the Exchange.

⁵ The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

⁶ See Securities Exchange Act Release No. 62661 (August 13, 2010), 75 FR 49544 (August 6, 2010) (SR-Phlx-2010-110).

This rule change will not impact the manner in which JBO orders are treated for purposes of other Exchange Rules including but not limited to priority in the Exchange's trading system. With this proposal, JBO orders will continue to be cleared in the Firm range at OCC. Today, JBO orders are assessed transaction fees and paid rebates the same as Firms.

Non-member JBO orders are excluded from the Monthly Firm Fee Cap⁷ and firm facilitation waiver.⁸ While member JBO Orders are eligible for the Monthly Firm Fee Cap and firm facilitation waiver today, there are currently no members who send JBO orders that have met the qualifications for and have been afforded the benefit of either the Monthly Firm Fee Cap

⁷ Firms are subject to a maximum fee of \$75,000 ("Monthly Firm Fee Cap"). Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in Section II) are excluded from the Monthly Firm Fee Cap. Reversal and conversion, jelly roll and box spread strategy executions (as defined in Section II) are included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap. Member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account. The Exchange does not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Monthly Firm Fee Cap. JBO participant charges are not included in the Monthly Firm Fee Cap. See Securities Exchange Act Release No. 63780 (January 6, 2011), 76 FR 5846 (February 2, 2011) (SR-Phlx-2011-07).

⁸ A facilitation occurs when a floor broker holds an option order for a public customer and a contra-side order for the same options series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. See Exchange Rule 1064. The Firm Floor Options Transaction Charges is waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges is waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) is waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.

or Firm facilitation waiver. With this proposal, the Exchange proposes to exclude all JBO orders, member or non-member, from the Monthly Firm Fee Cap and Firm facilitation waiver. JBO participants would be assessed fees and paid rebates the same as Broker-Dealers as of July 1, 2014.

The Exchange proposes to amend the Exchange's Pricing Schedule to define the term JBO in the preface as follows: "The term "Joint Back Office" or "JBO" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer." Further a footnote describing a JBO is included in the Preface to the Pricing Schedule. JBO Orders may be entered electronically or on the Exchange's trading floor.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Adding an origin code to JBO orders is a more efficient manner in which to identify those orders separate and apart from other orders entered on Phlx. In addition, JBO orders will continue to clear in the Firm range at OCC as is the case today. The Exchange will more easily be able to discern the pricing associated with clearly identified JBO orders. This will eliminate any potential confusion, thereby removing a potential impediment to and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest. The Exchange believes that automating this

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

process of manually identifying JBO Orders will promote just and equitable principles of trade by creating an identifiable method of distinguishing JBO orders entered into the Exchange's Trading System. The Exchange believes that automating this process is a more efficient manner in which to identify and bill these type of orders.

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹¹ in general, and with Section 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 or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that its proposal to assess pricing for JBO orders the same as for Broker-Dealers is reasonable because the Exchange believes that the business of a JBO is similar to that of an away market maker and other Broker-Dealers. A JBO participant maintains a JBO arrangement with a JBO Broker pursuant to Section 220.7 of Regulation T. A JBO participant could be a member, member organization or non-member organization. The transactions at issue are not being done for the member or member organization's proprietary account. Similarly, an away market maker is a member of another national securities exchange registered as a market maker in an options class(es). An away market maker is considered to be a Broker-Dealer as the market maker is not subject to market making obligations on the Exchange similar to other Phlx Market Makers. The Chicago Board Options Exchange, Incorporated ("CBOE") assesses manual equity option JBO orders fees the same as broker-dealer and electronic equity option JBO orders fees the same as a Professional.¹³

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4) and (5).

¹³ See CBOE's Fees Schedule.

The Exchange believes that it is reasonable to assess the same fees and pay the same rebates on JBO orders as are paid and assessed to a Broker-Dealer because the Exchange believes a JBO participant's business is similar to that of a Broker-Dealer and should therefore be priced the same. The Exchange believes that its proposal to assess JBO orders pricing the same as Broker-Dealers is equitable and not unfairly discriminatory because the Exchange will uniformly assess JBO orders the same fees and pay the same rebates as today are assessed and paid to a Broker-Dealer.

The Exchange believes that it is reasonable to exclude all JBO orders (member and non-member) from the Monthly Firm Fee Cap and facilitation waiver because JBO Orders will be assessed fees and paid rebates the same as Broker-Dealers and therefore should not be able to benefit from Firm pricing. The Exchange believes that it is equitable and not unfairly discriminatory to exclude all JBO orders (member and non-member) from the Monthly Firm Fee Cap and facilitation waiver because the Exchange will uniformly assess JBO orders the same fees and pay the same rebates as today are assessed and paid to a Broker-Dealer. All JBO Orders would be excluded from the Monthly Firm Fee Cap and facilitation waiver uniformly.

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 is assessing fees to all JBOs (member and non-member) in a similar manner with this proposal. JBO participants would be assessed fees and paid rebates the same as Broker-Dealers. The Exchange believes that assessing JBO Orders the same as Broker-Dealers does not impose a burden on competition because a JBO participant's business is similar to that of a Broker-Dealer and should therefore be priced the same. JBO Orders are not being transacted for the member or

member organization's proprietary account. Rather, JBO participants maintain JBO arrangements with a JBO Broker pursuant to Section 220.7 of Regulation T. Also, today Firms and Broker-Dealer fees are the same.

Further, utilizing an origin code to identify JBO Orders does not impose an unfair burden on competition. The Exchange believes that automating the process of manually identifying JBO Orders by creating an identifiable method of distinguishing JBO orders entered into the Exchange's Trading System would assist the Exchange in regulating its market. In addition, CBOE utilizes an origin code today to identify JBO Orders.

The Exchange's proposal would exclude both member and non-member JBO Orders from the Monthly Firm Fee Cap and firm facilitation waiver. Today, member JBO Orders are eligible for the Monthly Firm Fee Cap and firm facilitation waiver, although there are currently no members who send JBO orders that have met the qualifications for and have been afforded the benefit of either the Monthly Firm Fee Cap or Firm facilitation waiver. The Exchange believes this proposal does not create an undue burden on competition because both member and non-member JBO Orders would be treated equally.

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)(ii) of

the Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.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.

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-2014-28 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-2014-28. 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

¹⁴ 15 U.S.C. 78s(b)(3)(a)(ii).

¹⁵ 17 CFR 240.19b-4(f)(6).

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-2014-28, 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

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).