

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74125; File No. SR-PHLX-2015-05)

January 23, 2015

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

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 January 21, 2015, 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 Section II<sup>3</sup> of the Pricing Schedule entitled “Multiply Listed Options Fees” to assess an increased Options Surcharge in MNX<sup>4</sup> and NDX.<sup>5</sup>

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on February 2, 2015.

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

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

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

<sup>3</sup> Section II of the Pricing Schedule includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

<sup>4</sup> MNX represents options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX (“MNX”).

<sup>5</sup> NDX represents options on the Nasdaq 100 Index traded under the symbol NDX (“NDX”).

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 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 filing is to amend Section II of the Pricing Schedule entitled "Multiply Listed Options Fees" to increase the Options Surcharge for transactions in MNX and NDX from \$0.15 to \$0.20 per contract for Professionals,<sup>6</sup> Market Makers,<sup>7</sup> Specialists,<sup>8</sup>

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<sup>6</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 during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

<sup>7</sup> A "market maker" includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (see Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

<sup>8</sup> The term "Specialist" applies to transactions for the account of a Specialist as defined in Exchange Rule 1020(a).

Broker-Dealers<sup>9</sup> and Firms.<sup>10</sup> As is the case today, Customers<sup>11</sup> will not be assessed an Options Surcharge in MNX or NDX. The Options Surcharge is assessed in addition to the Options Transactions Fees in Section II of the Pricing Schedule. This rule change applies to both electronic and floor transactions.

The Exchange believes that these surcharges will assist the Exchange in remaining competitive in these options by recouping certain fees.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>12</sup> in general, and with Section 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 Exchange's proposal to increase the Options Surcharge for transactions in MNX and NDX from \$0.15 to \$0.20 per contract for all non-Customer market participants is reasonable because all non-Customer market participants will continue to be assessed the same surcharge.

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<sup>9</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>10</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 ("OCC").

<sup>11</sup> The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at 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).

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

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

As is the case today, Customers will not be assessed an Options Surcharge. Also, the Options Surcharge remains competitive with fees at other options exchanges.<sup>14</sup>

The Exchange's proposal to increase the Options Surcharge for transactions in MNX and NDX from \$0.15 to \$0.20 per contract for all non-Customer market participants is equitable and not unfairly discriminatory because the Exchange will continue to assess all non-Customer market participants a uniform Options Surcharge. Customers are not assessed an Options Surcharge. Customer order flow is unique because 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. Finally, the Exchange believes that it is equitable and not unfairly discriminatory for non-Customer market participants who trade these products to pay the surcharge fee as the Exchange has entered into a licensing agreement to obtain intellectual property rights to list these products and seeks to recoup a portion of its costs.

**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 because all non-Customer market participants will continue to be assessed a uniform Options Surcharge Fee for transactions in MNX and NDX, in addition to other transaction fees. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market

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<sup>14</sup> See NYSE MKT LLC's ("NYSE AMEX") Fee Schedule. NYSE AMEX assesses a Royalty Fee of \$0.22 per contract for transactions in MNX and NDX. See also NYSE Arca Inc.'s ("NYSE Arca") Fees and Charges. NYSE Arca, Inc. assesses a Royalty Fee of \$0.22 per contract for transactions in MNX and NDX.

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 operates in a highly competitive market, comprised of twelve exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed, as described in the proposal, are influenced by these robust market forces and therefore must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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>15</sup> 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 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 Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

#### 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-2015-05 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-PHLX-2015-05. 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 such 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-2015-05 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>16</sup>

Brent J. Fields  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).