

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75488; File No. SR-Phlx-2015-65)

July 20, 2015

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules 1092 and 124, and Modify the Phlx Pricing Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 15, 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 the Substance of the Proposed Rule Change

The Exchange proposes to (1) amend Rule 1092 to assess a \$500 Appeal Fee against a member or member organization which initiates and loses an appeal of an Options Exchange Official (“Official”) determination regarding an Obvious Error or Catastrophic Error, and to pass through other market center charges associated with obvious error determinations; (2) amend Rule 124, to clarify that that the \$250 appeal fee provided for in Rule 124(d) will not apply to appeals of Obvious Error or Catastrophic Error determinations, and (3) to modify the Phlx Pricing Schedule (“Pricing Schedule”) to reflect the new \$500 Appeal Fee and pass-through charges from other market centers.

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

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

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 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

On May 8, 2015 the Exchange filed a proposed rule change (the "1092 Replacement Filing") to delete Rule 1092, Obvious Errors and Catastrophic Errors, and replace it with new Rule 1092 entitled "Nullification and Adjustment of Options Transactions including Obvious Errors" ("New Rule 1092"). New Rule 1092 also became operative on May 8, 2015.<sup>3</sup>

The purpose of this proposed rule change is to adopt a \$500 Appeal Fee that will apply in the event of unsuccessful appeals of Official determinations rendered pursuant to Section (I) of New Rule 1092 and to permit the Exchange to pass along charges assessed by another market

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<sup>3</sup> See SR-Phlx-2015-43. New Rule 1092 harmonizes rules related to the adjustment and nullification of erroneous options transactions with those of other exchanges. The Exchange believes that New Rule 1092, together with comparable rules filed by the other options exchanges, will provide transparency and finality with respect to the adjustment and nullification of erroneous options transactions, achieving consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest.

center in connection with Obvious Error and Catastrophic Error determination requests presented to that market center by the Exchange on a member or member organization's behalf. To accommodate this proposed fee change, the Exchange proposes to amend Rule 124, Disputes-Options, to add new language to Section (l) of New Rule 1092, and to make conforming changes to the Exchange's Pricing Schedule, as described below.

(I) \$500 Appeal Fee/Pass Through Charges. The Exchange proposes to amend Section (l) of the New Rule 1092, pursuant to which the Exchange will assess a \$500 fee against members or member organizations who initiate a request for an appeal of an Official's Obvious Error or Catastrophic Error determination to the Exchange's Market Operations Review Committee ("MORC"), where the appeal is unsuccessful and the MORC votes to uphold the Official's determination. Further, the new rule permits the Exchange to pass any resulting charges through to the relevant member or member organization in instances where the Exchange, on behalf of the member or member organization, requests a determination by another market center that a transaction is an Obvious Error or Catastrophic Error.

(II) Amendment to Rule 124. Currently, Rule 124(d) provides for assessment of a \$250 fee to a member or member organization seeking review by the MORC of an Official ruling regarding Obvious Errors or Catastrophic Errors if the Official's ruling is sustained and not overturned or modified by the MORC.<sup>4</sup> The Exchange proposes to amend Rule 124(a) to clarify that no provision of Rule 124, including the Rule 124(d) \$250 appeal fee, shall apply to Obvious

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<sup>4</sup> Exchange Rule 124(a) currently provides that "[t]his Rule 124(a) shall not apply to options transactions that are the result of an Obvious Error (as defined in Rule 1092)." However, the Exchange currently applies Rule 124(d) to unsuccessful appeals of Official determinations of Obvious Errors to the MORC. The Exchange believes that fees associated with MORC appeals of Obvious Errors or Catastrophic Errors will be more logically set forth in the rulebook in Rule 1092(l) which describes the MORC appeals process for Obvious Errors and Catastrophic Errors.

Errors or Catastrophic Errors, both of which instead are to be subject to the new \$500 Appeal Fee provision and procedures of Rule 1092. The Exchange does not propose to move or make any further changes to any provision of Rule 124, which will continue to apply to disputes occurring on and relating to the trading floor (but not to Obvious Errors or Catastrophic Errors).

(III) Amendment to Pricing Schedule.

Currently, Chapter VII, Part D of the Exchange's Pricing Schedule reflects the \$5,000 Catastrophic Error Fee provided for in prior Exchange Rule 1092(f)(ii), which was eliminated in favor of New Rule 1092 which does not contain such a fee.<sup>5</sup> The Pricing Schedule is being revised to reflect the elimination of the \$5000 Catastrophic Error Fee and the addition instead, pursuant to the proposed new language in Section (l) of New Rule 1092, of the \$500 Appeal Fee and pass through charges described in (I) above.<sup>6</sup>

2. Statutory Basis

The Exchange believes that its proposal to amend Rule 124 and New Rule 1092 as well

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<sup>5</sup> Pursuant to Section (f) of prior Exchange Rule 1092 titled "Obvious Error and Catastrophic Errors," if an Exchange member believed that it had participated in a transaction that qualified as a Catastrophic Error, it could request a determination that a Catastrophic Error occurred. If an Options Exchange Official determined that a Catastrophic Error had occurred, the Options Exchange Official would adjust the execution price of the transaction according to Rule 1092. If it were determined that a Catastrophic Error had not occurred, the member requesting the determination would be assessed a charge of \$5,000 pursuant to Exchange Rule 1092(f)(ii). See Securities Exchange Act Release No. 58002 (June 23, 2008), 73 FR 36581 (June 27, 2008).

<sup>6</sup> The purpose of removing the \$5,000 Catastrophic Error Fee, as part of replacing prior Rule 1092 with New Rule 1092 in the 1092 Replacement Filing, was to remove a potential disincentive from requesting a review of what a market participant may believe to be a Catastrophic Error. Currently, the mere possibility – even if slight – that the Official could determine not to adjust or nullify the transaction in question and thus trigger the assessment of the \$5,000 fee may unnecessarily deter members from requesting reviews which they believe to be justified. By eliminating the fee, the significant financial consequence of an adverse decision on a review will be lessened, and market participants should feel more comfortable with the fairness of the markets and the process adopted by the Exchange for requesting Officials to conduct reviews for determinations of Catastrophic Errors.

as the Pricing Schedule as proposed herein is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act<sup>8</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 Phlx operates or controls, and is not designed to permit unfair discrimination between market participants to whom the Exchange's fees and rebates are applicable. The \$500 Appeal Fee and the provision of pass through charges from other market centers are proposed herein are equitable, in that they apply equally to all member and member organizations lodging appeals to the MORC pursuant to New Rule 1092(1) or requesting Obvious Error or Catastrophic Error determinations from other market centers through the Exchange. The new fee and pass through charges are reasonable, in that they allow the Exchange to recoup administrative costs associated with such MORC appeals and with seeking Obvious Error or Catastrophic Error determinations of other market centers, while discouraging frivolous appeals or determination requests. The Exchange believes the new \$500 Appeal Fee, which would reflect a \$250 increase from the current appeal fee under Rule 124(d), is reasonable in that it will provide the Exchange additional resources with which to administer its regulatory functions, including the appeal of decisions made under New Rule 1092.

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 does not believe the proposal will have any impact on competition. The \$500 Appeal Fee and the provision of pass through charges from other market centers proposed herein will

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4), (5).

apply equally to all member and member organizations lodging appeals to the MORC pursuant to New Rule 1092(1) or requesting Obvious Error or Catastrophic Error determinations from other market centers through the Exchange.

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>9</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: (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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2015-65 on the subject line.

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<sup>9</sup> 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-2015-65. 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, D.C. 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-2015-65, 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>10</sup>

Robert W. Errett  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).