

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69005; File No. SR-Phlx-2013-16)

February 28, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish Transaction Fees for Options on Treasury Securities

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 February 19, 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, 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 amend its Fee Schedule to create fees for options on Treasury securities.³

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2013. The Exchange will begin trading Options on Treasury Securities on February 19, 2013. From February 19, 2013

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Subsection (a)(1) of proposed Rule 1001D states that the term “Treasury securities” (also known as Treasury debt securities) means a bond or note or other evidence of indebtedness that is a direct obligation of, or an obligation guaranteed as to principal or interest by, the United States or a corporation in which the United States has a direct or indirect interest (except debt securities guaranteed as to timely payment of principal and interest by the Government National Mortgage Association). Securities issued or guaranteed by individual departments or agencies of the United States are sometimes referred to by the title of the department or agency involved (*e.g.*, a “Treasury security” is a debt instrument that is issued by the United States Treasury).

through February 28, 2013, the fees and rebates proposed herein will not be applicable. Exchange members and member organizations will be assessed \$0.00 Options Transaction Charges and will receive \$0.00 Options Transactions Rebates.

The text of the proposed rule change is provided in Exhibit 5. The text of the proposed rule change is also 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 the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to create new fees titled "Options on Treasury Securities" to support options overlying certain treasury securities ("Options on Treasury Securities"),⁴ as well as to offer to discounted pricing to Customers and Specialists and Market Makers and rebates to Specialists and Market Makers to encourage these market participants to trade Options on Treasury Securities.

The Options on Treasury Securities will trade on the Exchange as a Singly Listed

⁴ See Securities Exchange Release Act No. 67976 (October 4, 2012), 77 FR 61794 (October 11, 2012) (SR-Phlx-2012-105) (approval order).

Option.⁵ The Exchange proposes to add these fees to Section III of the Fee Schedule titled “Singly Listed Options.”⁶ Specifically, the Exchange is proposing to assess the following per contract fees and rebates on market participants to trade Options on Treasury Securities:

	<u>Customer</u>	<u>Professional</u>	<u>Specialist and Market Maker</u>	<u>Firm</u>	<u>Broker-Dealer</u>
<u>Options Transaction Rebate - Electronic</u>	<u>N/A</u>	<u>N/A</u>	<u>\$0.05</u>	<u>N/A</u>	<u>N/A</u>
<u>Options Transaction Charge - Electronic</u>	<u>\$0.15</u>	<u>\$0.20</u>	<u>N/A</u>	<u>\$0.20</u>	<u>\$0.20</u>
<u>Options Transaction Charge - Floor⁷</u>	<u>\$0.15</u>	<u>\$0.20</u>	<u>\$0.10</u>	<u>\$0.20</u>	<u>\$0.20</u>

The Exchange believes that the \$0.05 rebate per contract for electronic Options Transactions for Specialists and Market Makers should encourage them to offer options on treasury securities to their customers.

The charge for Options Transactions per contract, both electronic and floor, will be \$0.15 for Customers and \$0.20 for Professionals,⁸ Firms and Broker-Dealers. Specialists and Market

⁵ A Singly Listed Option means an option that is only listed on the Exchange and is not listed by any other national securities exchange.

⁶ Section III of the Fee Schedule includes options overlying currencies, equities, exchange-traded funds (“ETFs”), exchange-traded notes (“ETNs”), and indexes.

⁷ The Commission notes that proposed footnote 12 of Section III of the Fee Schedule states “Options Transaction Charge – Floor will apply to the first 500 contract only. Each additional contract will be assessed an options transaction charge – floor of \$0.00.”

⁸ The Exchange defines a “professional” as 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

Makers will not be charged for electronic Options Transactions, but charged \$0.10 for floor Options Transactions. However, for all market participants floor Options Transaction charges will apply to the first 500 contracts only, meaning that each additional contract will not be assessed a floor options transaction charge. This volume discount on trading Options on Treasury Securities will serve to increase order flow, which, in turn, will provide increased liquidity to the market and benefit all participants.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2013. The Exchange will begin trading Options on Treasury Securities on February 19, 2013. From February 19, 2013 through February 28, 2013, the fees and rebates proposed herein will not be applicable. Exchange members and member organizations will be assessed \$0.00 Options Transaction Charges and will receive \$0.00 Options Transactions Rebates.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed fees for Options on Treasury Securities are equitable, reasonable and not unfairly discriminatory because the Exchange is seeking to recoup the operational and development costs associated with the Options on Treasury Securities

average during a calendar month for its own beneficial account(s) (hereinafter “Professional”).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

product, a proprietary product of the Exchange, while also encouraging members and member organizations to trade Options on Treasury Securities by assessing a floor options transaction charge that will apply only to the first 500 contracts and, thereafter, each additional contract will not be assessed an options transaction charge. It is also reasonable and equitable to offer a floor volume discount on trading Options on Treasury Securities because all market participants are treated equally and order flow will provide increased liquidity to the market and benefit all participants. Institutional investors trade in large size and typically utilize floor brokers on certain trades and the proposed pricing better aligns the fees with other similar derivatives in the market place. In addition, the concept of offering a volume discount to incentivize order flow is not novel.¹¹

The Exchange has previously stated that it incurs higher costs for Singly Listed options as compared to Multiply Listed options.¹² The Chicago Board Options Exchange, Incorporated (“CBOE”) noted in a comment letter dated June 21, 2010, that CBOE relies upon fees to recoup licensing costs incurred on options products that use third-party proprietary indexes as benchmarks (such as the S&P 500[®]), and to generate returns on its investments for its own popular proprietary products (such as The CBOE Volatility Index[®] (“VIX[®]”) Options).¹³ The Exchange agrees with CBOE’s position and while the Exchange continues to assert that Singly Listed products incur higher costs and therefore market participants should be assessed higher

¹¹ See CBOE’s Fees Schedule. CBOE has a sliding scale for its proprietary products whereby transaction fees are reduced when a Clearing Trading Permit Holder reaches certain volume thresholds in multiply listed options on CBOE in a month.

¹² See Securities Exchange Release Act No. 64096 (March 18, 2011), 76 FR 16646 (March 24, 2011) (SR-Phlx-2011-34).

¹³ See CBOE’s Comment Letter dated June 21, 2010 to the Proposed Amendments to Rule 610 of Regulation NMS, File No. S7-09-10. CBOE further noted that options exchanges expend considerable resources on research and development related to new product offerings and options exchanges incur large licensing costs for many products.

fees as compared to Multiply Listed products, the Exchange is proposing to offer a volume discount, as a means to promote this new infant product.¹⁴

The Exchange believes that the proposed fees for Options on Treasury Securities are equitable because all market participants would be assessed lower fees for transacting electronic and floor Options on Treasury Securities (except Specialists and Market Makers that will not be charged at all for electronic transactions) as compared to other Singly Listed indexes (other than Alpha and MSCI Index Options). Specifically, Customers would be assessed \$0.15 per contract to transact either electronic or floor Options on Treasury Securities as compared to \$0.35 per contract for Singly Listed index options (other than Alpha and MSCI Index Options). Specialists,¹⁵ Registered Options Traders,¹⁶ SQTs,¹⁷ and RSQTs¹⁸ (collectively “market

¹⁴ If the Exchange determines to increase the pricing for options overlying Options on Treasury Securities at a later date, the Exchange would file a proposal with the Commission.

¹⁵ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

¹⁶ A Registered Options Trader (“ROT”) includes a Streaming Quote Trader (“SQT”), a Remote Streaming Quote Trader (“RSQT”) and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

¹⁷ An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

¹⁸ A RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

makers”)¹⁹ would be assessed no fee for transacting electronic Options on Treasury Securities and \$0.10 per contract for transacting floor Options on Treasury Securities, as compared to the \$0.40 per contract fee such Specialists and Market Makers are assessed for Singly Listed index options (other than Alpha and MSCI Index Options). Professionals, Firms and Broker-Dealers would be assessed \$0.20 per contract to transact either electronic or floor Options on Treasury Securities, as compared to \$0.60 per contract for all other Singly Listed index options (other than Alpha and MSCI Index Options). Specialists and Market Makers would be assessed \$0.10 per contract to transact floor Options on Treasury Securities, as compared to \$0.40 per contract for all other Singly Listed index options (other than Alpha and MSCI Index Options).

The Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees of \$0.15 per contract for electronic and floor Options Transactions on Treasury Securities for Customers and no fee for electronic and \$0.10 per contract for floor Options Transactions on Treasury Securities for Specialists and Market Makers, as well as to offer a \$0.05 rebate per contract for electronic Options Transactions on Treasury Securities for Specialists and Market Makers, in recognition of the differing contributions these participants provide to the market place. Increased Customer liquidity benefits all market participants seeking to provide liquidity to Customers. Additionally, the most critical form of advertising for an exchange’s new product is the electronic quotations produced by Specialists and Market Makers and disseminated to the investing public. Wide markets can impede the growth of a product and to ensure the best possible quotes are available to the market place the Exchange will offer a rebate to create the incentive for Specialists and Market Makers to offer their best bids and offers without the impact

¹⁹ The Exchange market maker category includes Specialists (see Rule 1020) and ROTs (Rule 1014(b)(i) and (ii), which includes SQTs (see Rule 1014(b)(ii)(A)) and RSQTs (see Rule 1014(b)(ii)(B)).

of a fee. All Specialists and Market Makers, even an ROT, can avail themselves of this pricing by posting bids and/or offers in the electronic market. Electronic bids and offers act, in part, to attract orders to the floor, which provides floor participants opportunities to trade – the pricing reflects these differing benefits and contributions to the fledgling treasury options market place.

The Exchange also believes that offering discounted pricing to market participants for transacting 500 or more contracts on Options on Treasury Securities further provides benefits to market participants such as to increase order flow, which, in turn, will provide increased liquidity to the market and benefit all participants. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to assess a Professional, Firm and Broker-Dealer a per contract fee of \$0.20 per contract for transacting Options on Treasury Securities because the Exchange is assessing all market participants, except Customers and Specialists and Market Makers, the same rate to transact Options on Treasury Securities. The Exchange believes that the price differentiation between Customers and Specialists and Market Makers as compared to Professionals, Firms and Broker-Dealers is justified and not unfairly discriminatory because Customers order flow brings unique benefits to the market which benefits all market participants through increased liquidity and Specialists and Market Makers have obligations to the market and regulatory requirements,²⁰ which normally do not apply to other market participants. They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between Customers and Specialists and Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment

²⁰ See Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

on the Exchange by these market participants, as well as the differing mix of orders entered. The Exchange believes that the proposed fees are reasonable and not unfairly discriminatory because the fees are consistent with price differentiation that exists today at all option exchanges. For example, CBOE assesses different rates for certain proprietary indexes as compared to other index products transacted at CBOE. VIX options and The S&P 500[®] Index options (“SPXSM”) are assessed different fees than other indexes.²¹ In addition, the concept of offering a volume discount to incentivize order flow is not novel.²²

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 believes that by offering Options on Treasury Securities it will encourage order flow to be directed to the Exchange, which will benefit all market participants by increasing liquidity on the Exchange. The Exchange will assess such fees on all market participants (except Specialists and Market Makers for electronic Options Transactions). Additionally, Specialists and Market Makers are eligible to qualify for a rebate on electronic Options Transactions. The Exchange believes these pricing amendments do not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange.

The Exchange believes that the adoption of the proposed fees and rebates for Options on Treasury Securities will not impose any unnecessary burden on intramarket competition because even though these options will be listed solely on the Exchange, the Exchange operates in a highly competitive market, comprised of eleven exchanges, any of which that can determine to

²¹ See CBOE’s Fees Schedule.

²² Supra footnote 11.

trade similar products. Also, Options on Treasury Securities should result in increased options volume and greater trading opportunities for all market participants.

Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues on other products and similar or less than fees assessed on other singly-listed options and therefore must continue to be reasonable and equitably allocated.

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.²³ 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.

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:

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2013-16 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-2013-16. 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 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-2013-16, 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.²⁴

Kevin M. O'Neill
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).