

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71529; File No. SR-Phlx-2014-08)

February 12, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Monthly Strategy Cap

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 January 30, 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 the fee caps applicable to certain strategies on Multiply Listed Options in Section II, entitled “Multiply Listed Options Fees.”³

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on February 3, 2014.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Section II Multiply Listed Options Fees include options overlying equities, ETFs, ETNs and indexes that are multiply listed.

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 the proposed rule change is to amend the fee caps relating to dividend,⁴

⁴ A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend.

merger,⁵ short stock interest,⁶ reversal and conversion,⁷ jelly roll⁸ and box spread⁹ strategies in Section II of the Pricing Schedule¹⁰ (together the “Monthly Strategy Cap”). The Exchange believes the proposed amendment would continue to incentivize market participants to trade on the Exchange by capping floor option transaction charges related to various strategies.

⁵ A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

⁶ A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

⁷ A reversal and conversion strategy is defined as transactions that employ calls and puts of the same strike price and the underlying stock. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.

⁸ A jelly roll strategy is defined as transactions created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position.

⁹ A box spread strategy is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively.

¹⁰ While the fee caps are noted in Section II of the Pricing Schedule, the caps apply to all Multiply Listed Options in Sections I and II.

Today, Specialist,¹¹ Market Maker,¹² Professional,¹³ Firm and Broker-Dealer floor option transaction charges are capped at \$1,250 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts. Specialist, Market Maker, Professional, Firm and Broker-Dealer floor option transaction charges executed on the same trading day in the same options class are capped at \$700 each for reversal and conversion, jelly roll and box spread strategies. In addition, the Monthly Strategy Cap for floor option transaction charges for dividend, merger and short stock interest, reversal and conversion, jelly roll and box spread strategies are capped at \$35,000 per member organization for combined executions in a month when such members are trading in their own proprietary account. The Exchange is proposing to modify only the Monthly Strategy Cap per member organization. The remaining caps are not changed.

The Exchange proposes to increase the Monthly Strategy Cap for dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategies from \$35,000 per member organization per month to \$50,000 per member organization for combined executions in a month provided that such member organizations are trading in their own proprietary account.¹⁴

¹¹ A “Specialist” is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

¹² 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)).

¹³ The term “Professional” is a 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).

¹⁴ The requirement that such member organizations trade in their own proprietary account would not be amended by this proposal.

For purposes of clarity, the Exchange also proposes to make a technical correction to Section II of the Pricing Schedule to remove a reference the term “short stock, interest” and replace it with the correct term “short stock interest”.¹⁵ The clarification makes the use of “short stock interest” consistent throughout the Pricing Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act¹⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁷ 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’s proposal to increase the Monthly Strategy Cap on floor option transaction charges for dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategies from \$35,000 to \$50,000 per month, provided the strategy is executed on the same trading day in the same options class when such members are trading in their own proprietary account, is reasonable because the Exchange seeks to continue to incentivize member organizations to transact a greater number of strategies on the Exchange to benefit from the fee cap. Also, this proposal is similar in nature to caps on other exchanges, namely NYSE Arca, Inc. (“NYSE Arca”),¹⁸ NYSE Amex, Inc. (“NYSE Amex”)¹⁹ and the Chicago Board Options

¹⁵ See Securities Exchange Act Release No. 68406 (December 11, 2012), 77 FR 74715 (December 17, 2012)(SR-Phlx-2012-138)(discussing, among other things, Monthly Strategy Cap on “short stock interest”).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4).

¹⁸ See NYSE Arca General Options and Trading Permit (OTP) Fees.

¹⁹ See NYSE Amex Options Fee Schedule.

Exchange, Incorporated (“CBOE”)²⁰ for strategies. The Exchange also believes that the increased fee cap is equitable and not unfairly discriminatory because the Exchange is offering all members, except for Customers,²¹ the same opportunity to cap their floor option transaction charges in Multiply Listed Options.

The Exchange believes that its proposal to amend the amount of the Monthly Strategy Cap to orders originating from the Exchange floor is reasonable because members continue to pay floor brokers to execute trades on the Exchange floor. The Exchange believes that offering fee caps to member organizations executing multiply listed floor options transactions in their own proprietary accounts would defray brokerage costs associated with executing strategy transactions and continue to incentivize members to utilize the floor for certain executions.²² The Exchange believes that its proposal to amend the Monthly Strategy Cap originating from the Exchange floor is equitable and not unfairly discriminatory because today, the fee caps are only applicable for floor transactions. Moreover, the Exchange believes that a requirement that both the buy and sell sides of the order originate from the floor to qualify for applicability of the Monthly Strategy Cap would constitute equal treatment of members.

The Exchange believes that making clarifying changes to the Pricing Schedule, such as that the reference in respect of the Monthly Strategy Cap is to “short stock interest” rather than “short stock, interest”, is a reasonable, equitable and not unfairly discriminatory amendment

²⁰ See CBOE’s Fees Schedule.

²¹ Customers are not assessed options transaction charges in Section II of the Pricing Schedule.

²² The Exchange’s proposal would only apply the fee cap to options transaction charges where buy and sell sides originate from the Exchange floor. See text in Section II of the Pricing Schedule.

because this technical amendment would clarify the Pricing Schedule and make its terms consistent throughout.

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. To the contrary, the proposed fees would continue to encourage members to transact strategies on the exchange because the proposed fee caps are competitive with fee caps at other options exchanges, and would clarify the use of “short stock interest” in respect of the Monthly Strategy Cap to make it consistent throughout the Pricing Schedule to the benefit of members, member organizations, and traders.

The Exchange operates in a highly competitive market, comprised of twelve options 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 above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid 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.²³ At any time within 60 days of the filing of the proposed rule change, the Commission

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

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:

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-2014-08 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-2014-08. 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 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-2014-08, 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).