

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72784; File No. SR-Phlx-2014-45)

August 7, 2014

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

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 August 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 and II, 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 Pricing Schedule at Section VI entitled “Membership Fees” to amend Permit Fees.

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

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

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

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 the Permit Fees in Section VI of the Pricing Schedule in order that the Exchange can allocate costs to various options market participants which are incurred by the Exchange.

Today, the Exchange assesses members and member organizations transacting business on the Exchange a monthly Permit Fee of \$2,150. The Exchange assesses members and member organizations not transacting business on the Exchange a monthly Permit Fee of \$7,500. PSX only members<sup>3</sup> and member organizations are not assessed a Permit Fee.<sup>4</sup> Today, options members or member organizations pay an additional Permit Fee for each sponsored options participant.

The Exchange proposes to eliminate the current Permit Fees for members and member organizations transacting and not transacting a business and instead assess options Permit Fees by market participant. The Exchange proposes to assess a monthly Permit Fee of \$2,150 to Floor

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<sup>3</sup> PSX only members are not engaged in an options business at Phlx in a particular month.

<sup>4</sup> Today, applicants that apply for membership solely to participate in the NASDAQ OMX PSX equities market are not assessed a Permit Fee, Application Fee, Initiation Fee, or Account Fee. Should such approved member or member organization subsequently elect to engage in business on Phlx XL II, the Exchange's options platform, the monthly Permit Fee, Initiation Fee and Account Fee will apply. See note 14 in the Pricing Schedule.

Brokers,<sup>5</sup> Specialists<sup>6</sup> and Market Makers,<sup>7</sup> effectively assessing these market participants the same rate of \$2,150 a month for a permit. All other market participants (Professionals, Firms and Broker-Dealers, collectively “Other Market Participants”) will be assessed a Permit Fee of \$4,000 in a given month, unless the member or member organization or member organizations under Common Ownership,<sup>8</sup> executes at least 100 options in a Phlx house account that is assigned to one of the member organizations in a given month, in which case the Permit Fee will be \$2,150 for that month. Option members and member organizations will continue to pay an additional Permit Fee for each sponsored options participant, which fee will be the Permit Fee that is assessed to the member or member organization sponsoring the options participant, either \$2,150 or \$4,000.<sup>9</sup> The Exchange believes that 100 options in a given month is a reasonable level given the volume of options transacted on Phlx.

Permit Fees for PSX only members and member organizations would be \$4,000 unless the member or member organization averages at least 1,000 shares executed per day in a given

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<sup>5</sup> A Floor Broker is defined in Phlx Rule 1060 as “[a]n individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and executing options orders received from members and member organizations.”

<sup>6</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<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 “Common Ownership” shall mean members or member organizations under 75% common ownership or control. See Preface to Exchange’s Pricing Schedule.

<sup>9</sup> The Exchange is amending note 16 in the Pricing Schedule to add clarity to the pricing for sponsored participants. See Exchange Rule 1094 titled Sponsored Participants. A Sponsored Participant may obtain authorized access to the Exchange only if such access is authorized in advance by one or more Sponsoring Member Organizations. Sponsored Participants must enter into and maintain participant agreements with one or more Sponsoring Member Organizations establishing a proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Exchange.

month, in which case the Permit Fee will be \$0.00 in a given month. This volume will be calculated by averaging the shares over a one month period. The Exchange believes 1,000 shares per day in a given month is a reasonable level given the lower volume of business transacted on PSX as compared to other mature equities markets such as The NASDAQ Stock Market LLC.

Finally, the Exchange proposes to eliminate various notes in the Pricing Schedule. The Exchange proposes to eliminate note 15 in the Pricing Schedule which states that, “[a] member or member organization will be assessed the \$2,150 monthly Permit Fee if that member or member organization: (1) transacts its option orders in its assigned Phlx house account in a particular month; or (2) is a clearing member of The Options Clearing Corporation or a Floor Broker; or (3) for those member organizations which are under Common Ownership, transacts at least one options trade in a Phlx house account that is assigned to one of the member organizations under Common Ownership.” This note, which describes the qualifications for transacting business on Phlx, is therefore no longer necessary. The Exchange is also eliminating note 17 in the Pricing Schedule which states that, “a member or member organization will be assessed a \$7,500 monthly fee if that member is (i) not a PSX Only Participant; or (ii) not engaged in an options business at Phlx in a particular month.” This note is no longer necessary as this fee would be eliminated. The Exchange is amending note 14 in the Pricing Schedule to remove references to the Permit Fee as the Exchange proposes to assess certain PSX only members a Permit Fee.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act<sup>11</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 customers, issuers, brokers, or dealers.

The Exchange's proposal to amend options Permit Fees to assess the fee by market participant is reasonable because the Exchange is seeking to recoup costs that are incurred by the Exchange. The Exchange believes it is reasonable to assess different market participants different Permit Fees because each market participant has a different business model and, as a result, pays various other different fees to the Exchange to maintain their business. Certain market participants such as Floor Brokers, Specialists and Market Makers pay other types of fees. For example, a Floor Broker requires space on the Exchange's trading floor, and infrastructure to support floor trading.<sup>12</sup> A Specialist and Market Maker similarly incur costs for certain data feeds, remote specialist fees, RSQT Fees and SQF Port Fees amongst other charges.<sup>13</sup> Taking into account the overall costs incurred by Floor Brokers, Specialists and Market Makers to simply access and conduct their business on the Exchange, it is reasonable to assess these market participants a Permit Fee of \$2,150 per month as compared to Other Market

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4), (5).

<sup>12</sup> Floor Brokers are subject to a Floor Facility Fee in Section VII of the Pricing Schedule.

<sup>13</sup> See Section VI of the Pricing Schedule.

Participants. The Exchange believes that it is reasonable to assess Other Market Participants a higher Permit Fee of \$4,000 in a given month unless they transact a certain volume on the Exchange because these market participants do not incur the higher costs to conduct their business as do Floor Brokers, Specialists and Market Makers. The Exchange also believes that it is reasonable to provide Other Market Participants an opportunity to lower Permit Fees from \$4,000 to the effective rate they pay today of \$2,150 if they transact a certain volume on Phlx in a given month because the Exchange believes this volume brings revenue to the Exchange, which in turn benefits other market participants because they are able to interact with that volume. The Exchange offers that the 100 options threshold in a given month is an achievable hurdle for a majority of options participants on Phlx today. A majority of Other Market Participants are capable of meeting this threshold. Finally, assessing different Permit Fee rates to different types of market participants is not novel.<sup>14</sup>

The Exchange's proposal to amend options Permit Fees to assess the fee by market participant is equitable and not unfairly discriminatory for the reasons which follow. The Exchange believes that continuing to assess Floor Brokers, Specialists and Market Participants effectively the same rate of \$2,150 for a Permit Fee recognizes the overall total fee structure of these market participants on Phlx. As mentioned herein, Floor Brokers, Specialists and Market Makers incur fees which are not borne by other market participants.<sup>15</sup> The Exchange believes

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<sup>14</sup> The Chicago Board Options Exchange, Incorporated ("CBOE"), the International Securities Exchange, LLC ("ISE") and Miami International Securities Exchange LLC ("MIAX") assess different Trading Permit Fees to different market participants. See CBOE's Fees Schedule, ISE's Fee Schedule and MIAX's Fee Schedule.

<sup>15</sup> Floor Brokers require space on the Exchange's trading floor, and infrastructure to support floor trading. Floor Brokers are subject to a Floor Facility Fee in Section VII of the Pricing Schedule. Specialists and Market Makers similarly incur costs for certain data feeds, remote specialist fees, RSQT Fees and SQF Port Fees amongst other charges. See Section VI of the Pricing Schedule.

that the proposed fee structure recognizes the costs that are incurred by these market participants in determining the Permit Fee for Floor Brokers, Specialists and Market Makers. The Exchange believes Floor Brokers, Specialists and Market Makers serve an important function on the Exchange and already pay a significant portion of the non-transaction fees assessed by the Exchange today. Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. Floor Brokers are registered with the Exchange for the purpose, while on the options floor, of accepting and executing options orders received from members and member organizations.<sup>16</sup> These market participants incur greater costs as compared to Professionals, Firms and Broker-Dealers because the type of business they conduct requires them to incur more cost to access the Exchange as compared to other market participants. Other Market Participants (Professionals, Firms and Broker-Dealers) do not incur the same fees as Floor Brokers, Specialists and Market Makers and therefore, in order to allocate fees, the Exchange proposes to assess these market participants an increased fee of \$4,000, unless they are able to transact at least 100 options in a given month. The Exchange believes that assessing Other Market Participants the higher fee of \$4,000 and offering the opportunity to lower the Permit Fee by executing a certain amount of volume is equitable and not unfairly discriminatory because they do not pay higher costs and the Exchange believes that transacting volume on Phlx brings liquidity to the Exchange, which in turn benefits other market participants. The Exchange believes that Other Market Participant members, member organizations and those under Common Ownership that add liquidity to the market place also bring revenue to the Exchange by incurring transaction fees. The Exchange believes it is equitable and not unfairly discriminatory to continue to assess effectively the same Permit Fee

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<sup>16</sup> See Exchange Rule 1060.

as today of \$2,150 to these Other Market Participants, equivalent to Floor Brokers, Specialists and Market Makers, in any given month in which they achieve the requisite volume because of the liquidity and revenue they bring to Phlx. The opportunity to lower Permit Fees affords Other Market Participants the opportunity to lower their fees by offering a means to benefit the Exchange by bringing liquidity to the marketplace.

The Exchange believes that continuing to assess PSX only members no Permit Fee provided they transact an average of at least 1,000 shares executed per day in a given month is reasonable because the Exchange seeks to continue to attract market participants to the PSX market by assessing no fee. The Exchange believes 1,000 shares per day is a reasonable level given the volume of transactions which take place on PSX as compared to mature equities markets.<sup>17</sup> The Exchange has waived the Permit Fee<sup>18</sup> for several years and desires to continue to incentivize PSX only members provided these members and member organizations transact a certain volume on PSX in a given month. The Exchange's proposal to assess a \$4,000 fee to PSX only members that do not transact the requisite volume in a given month is reasonable because the Exchange desires to distribute costs to operate the Exchange among its options and equities market participants.

The Exchange believes that continuing to assess PSX only members no Permit Fee provided they transact an average of at least 1,000 shares executed per day in a given month is equitable and not unfairly discriminatory because PSX is a growing market and not as robust as the options market on Phlx. PSX only members and member organizations that transact the

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<sup>17</sup> The Exchange offers that today, the majority of PSX members transacting an equities business meet the threshold.

<sup>18</sup> Today, applicants that apply for membership solely to participate in the NASDAQ OMX PSX equities market are not assessed a Permit Fee, Application Fee, Initiation Fee, or Account Fee. See Securities Exchange Act Release No. 61863 (April 7, 2010), [75 FR 20021](#) (April 16, 2010) (SR-Phlx-2010-54).

requisite volume on PSX bring liquidity to the Exchange, which in turn benefits other market participants. The Exchange believes that assessing PSX only members that do not transact the requisite volume of business in a given month, a \$4,000 monthly Permit Fee is equitable and not unfairly discriminatory because this fee properly allocates costs to PSX only members and member organizations not conducting a business on PSX, similar to options members and member organizations.

The Exchange's proposal to amend the Pricing Schedule to remove certain notes (15 and 17) which are irrelevant and amend note 14 is reasonable, equitable and not unfairly discriminatory because the Exchange believes that these amendments will clarify the Exchange's Pricing Schedule.

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 maintaining options Permit Fees at the same rate for Floor Brokers, Specialists and Market Makers because these participants pay other fees to the Exchange which are not incurred by Other Market Participants and therefore their overall costs is higher to transact business on Phlx. In addition, Other Market Participants are afforded an opportunity to lower Permit Fees by transacting business on Phlx. Phlx options members and member organizations that do not transact the requisite volume of business on Phlx to achieve the lower Permit Fee of \$2,150 will be assessed a higher Permit Fee of \$4,000. Some of these options members and member organizations are currently being assessed the \$7,500 Permit Fee today for transacting no business on Phlx, so the fee will be lower in those cases. For options members and member organizations today that transact some volume, but not the requisite volume specified for the

lower fee, the Permit Fee will increase. The Exchange believes that this fee differential (\$2,150 versus \$4,000) does not create an undue burden on competition because: (i) the requisite volume is not unreasonable given the volume of contracts traded in a day on Phlx; (ii) the Exchange believes that a majority of options members are capable of achieving the requisite volume; and (iii) those options members and member organizations that trade the requisite volume bring revenue to the Exchange, which in turn benefits other market participants because they are able to interact with that volume.

The Exchange believes that providing PSX only members the opportunity to transact a certain amount of volume to be assessed no Permit Fee and assessing other PSX members the same \$4,000 monthly Permit Fee as Other Market Participants conducting an options business on Phlx because they do not transact the requisite volume of business does not create an undue burden on competition because the pricing is being allocated evenly among all options and equity members and member organizations that do not transact a certain level of specified volume on Phlx. As far as not assessing PSX only members and member organizations that transact the requisite volume on PSX in a given month a Permit Fee, the Exchange believes this does not create an unfair burden on competition because the Exchange seeks to encourage market participants to connect to PSX, a relatively new market, to encourage order flow and grow this market. New markets typically offer market participants incentives, such as reduced fees, to attract order flow.

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 described in the above 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>19</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.

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-2014-45 on the subject line.

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2014-45. 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 the 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-2014-45 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>20</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).