

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81370; File No. SR-Phlx-2017-64)

August 10, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule

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 July 31, 2017 NASDAQ 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 Exchange's Pricing Schedule at Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in SPY," and Section IV, Part A entitled "PIXL Pricing" to amend pricing related to PIXL³ executions.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on August 1, 2017.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ PIXLTM is the Exchange's price improvement mechanism known as Price Improvement XL or PIXL. A member or member organization may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity ("PIXL Order") against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent ("Initiating Order"), provided it submits the PIXL order for electronic execution into the PIXL Auction pursuant to Rule 1080. See Exchange Rule 1080(n).

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqphlx.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

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in SPY" and specifically, the section that pertains to PIXL Executions in Standard and Poor's Depository Receipts/SPDRs ("SPY").⁴ The Exchange also proposes to amend PIXL Pricing in Section IV, Part A, entitled "PIXL Pricing" for all other Multiply-Listed options symbols.

First, the Exchange proposes to increase the SPY Complex PIXL rebate it offers Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers⁵ 2 through

⁴ Options overlying Standard and Poor's Depository Receipts/SPDRs ("SPY") are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

⁵ Section B of the Pricing Schedule contains Customer Rebate Tiers which are calculated by totaling Customer volume in Multiply Listed Options (including SPY) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o). Rebates are paid on Customer Rebate Tiers

6 or qualify for the Monthly Firm Fee Cap. Presently, the Exchange offers a rebate of \$0.10 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month. The Exchange proposes to increase that rebate to \$0.12 per contract. In doing so, the Exchange desires to incentivize members or member organizations to transact a greater number of SPY Complex PIXL Orders while also incentivizing members or member organizations to submit Customer order flow on Phlx.

Second, the Exchange proposes to increase the Complex PIXL (excluding SPY Options) rebate it offers to Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap. Presently, the Exchange offers a rebate of \$0.10 per contract for all Complex PIXL Orders (excluding SPY Options) greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of Complex SPY PIXL Orders in a month. The Exchange proposes to increase that rebate to \$0.12 per contract. In doing so, the Exchange desires to incentivize members and member organizations to transact a greater number of Complex PIXL Orders while also incentivizing members and member organizations to submit Customer order flow on Phlx to obtain the \$0.12 rebate on all Complex PIXL Orders (excluding SPY Options).

according to certain categories. Members and member organizations under Common Ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Affiliated Entities may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. See Section B of the Pricing Schedule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁸

Likewise, in NetCoalition v. Securities and Exchange Commission⁹ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁰ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . .

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁰ See NetCoalition, at 534 - 535.

. to be made available to investors and at what cost.”¹¹

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹² Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that its proposal is reasonable to offer to Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap an increased rebate of \$0.12 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month. The proposed rebate increase will incentivize members and member organizations to transact a greater number of SPY Complex PIXL Orders will also incentivize members and member organizations to submit Customer order flow on Phlx. All members and member organizations are eligible for this increased rebate.

The Exchange also believes that its proposal is equitable and not unfairly discriminatory because all members and member organizations are eligible for the proposed rebate increase,

¹¹ Id. at 537.

¹² Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

provided they met the requisite qualifications. Members and member organizations would be uniformly paid the increased rebate.

The Exchange also believes that its proposal is reasonable to offer to Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap an increased rebate of \$0.12 per contract for all Complex PIXL Orders (excluding SPY Options) greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month. The proposed increased rebate will incentivize members and member organizations to transact a greater number of Complex PIXL Orders and will also incentivize members and member organizations to submit Customer order flow on Phlx. All members and member organizations are eligible for this rebate, which applies to all Complex PIXL Orders excluding SPY Options.

This proposal is equitable and not unfairly discriminatory because all members and member organizations are eligible for the proposed increased rebate, provided that they meet the requisite qualifications.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are

free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The Exchange believes that increasing its rebates will promote inter-market competition by differentiating it from other options exchanges (e.g., MIAX) and making it a more attractive options trading venue.

The Exchange also believes that its proposal does not impose an undue burden on intra-market competition to offer Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap an increased rebate of \$0.12 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month. All members and member organizations are eligible for the proposed rebate increase, provided they met the requisite qualifications. Members and member organizations would be uniformly paid the increased rebate.

For the same reasons, the Exchange does not believe that its proposal imposes an undue burden on intra-market competition to offer to Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap an increased rebate of \$0.12 per contract for all Complex PIXL Orders (excluding SPY Options) greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month.

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.¹³

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. Please include File Number SR-Phlx-2017-64 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 20549-1090.

All submissions should refer to File Number SR-Phlx-2017-64. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-64 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.¹⁴

Robert W. Errett
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).