

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79751; File No. SR-Phlx-2017-02]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options Regulatory Fee

January 6, 2017.

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 January 4, 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 make adjustments to its Options Regulatory Fee (“ORF”) by amending Section IV, Part D, of the Pricing Schedule.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2017.

The text of the proposed rule change is available on the Exchange’s Web site 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to increase the ORF from \$0.0034 to \$0.0045 as of February 1, 2017 to recoup regulatory expenses while also ensuring that the ORF will not exceed costs.

##### Background

The ORF is assessed to each member for all options transactions executed or cleared by the member that are cleared at The Options Clearing Corporation (“OCC”) in the Customer range (*i.e.*, that clear in the Customer account of the member’s clearing firm at OCC). The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. The ORF is imposed upon all transactions executed by a member, even if such transactions do not take place on the Exchange.<sup>3</sup> The ORF also includes options transactions that are not executed by an Exchange member but are ultimately cleared by an Exchange member.<sup>4</sup> The ORF is not charged for member proprietary options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

<sup>3</sup> The ORF applies to all “C” account origin code orders executed by a member on the Exchange. Exchange Rules require each member to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the Rules of the Exchange and report resulting transactions to OCC. See Exchange Rule 1063, Responsibilities of Floor Brokers, and Options Floor Procedure Advice F-4, Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

<sup>4</sup> In the case where one member both executes a transaction and clears the transaction, the ORF is assessed to the member only once on the execution. In the case where one member executes a transaction and a different member clears the transaction, the ORF is assessed only to the member who executes the transaction and is not assessed to the member who clears the transaction. In the case where a non-member executes a transaction and a member clears the transaction, the ORF is assessed to the member who clears the transaction.

The ORF is designed to recover a portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange’s other regulatory fees, will cover a material portion, but not all, of the Exchange’s regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

##### ORF Adjustments

The Exchange is proposing to increase the ORF from \$0.0034 to \$0.0045 as of February 1, 2017 to recoup regulatory expenses while also ensuring that the ORF will not exceed costs. The Exchange lowered its ORF previously because it had collected certain fines associated with disciplinary actions taken by the Exchange.<sup>5</sup> At this time, the fines have been accounted for and the Exchange is increasing its ORF in connection with its regulatory expenses. The Exchange regularly reviews its ORF to ensure that the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange believes this adjustment will permit the Exchange to cover a material portion of its regulatory costs, while not exceeding regulatory costs.

The Exchange notified members of this ORF adjustment thirty (30) calendar days prior to the proposed operative date.<sup>6</sup>

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(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 the Exchange operates or controls [sic], and is not designed to permit

<sup>5</sup> See Securities Exchange Act Release No. 77032 (February 2, 2016), 81 FR 6560 (February 8, 2016) (SR-Phlx-2016-04).

<sup>6</sup> See Options Trader Alert 2016-37.

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

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

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

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

unfair discrimination between customers, issuers, brokers, or dealers.

The additional ORF offsets regulatory expenses, but does not exceed regulatory costs. Further, the Exchange's collection of ORF needs to be balanced against the amount of regulatory revenue collected by the Exchange. The Exchange believes that the proposed adjustments noted herein will serve to balance the Exchange's regulatory revenue against the anticipated regulatory costs.

The Exchange believes that increasing its ORF from \$0.0034 to \$0.0045 as of February 1, 2017 is equitable and not unfairly discriminatory because this adjustment would be applicable to all members on all of their transactions that clear as Customer at OCC. In addition, the ORF seeks to recover the costs of supervising and regulating members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

The ORF is not charged for member proprietary options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those members that require more Exchange regulatory services based on the amount of Customer options business they conduct.

Regulating Customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-Customer trading activity. Surveillance, regulation and examination of non-Customer trading activity generally tends to be more automated and less labor intensive. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are anticipated to be higher than the costs associated with administering the non-Customer component of its regulatory program. The Exchange proposes assessing higher fees to those members that will require more Exchange regulatory services based on the amount of Customer options business they conduct.<sup>9</sup> Additionally, the dues and

fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The Exchange believes that the proposed ORF is a small cost for Customer executions.<sup>10</sup> The Exchange has in place a regulatory structure to surveil for, exam [sic] and monitor the marketplace for violations of Exchange Rules. The ORF assists the Exchange to fund the cost of this regulation of the marketplace.

#### *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 does not believe that increasing its ORF creates an undue burden on intra-market competition because the adjustment will apply to all members on all of their transactions that clear as Customer at OCC. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. Additionally, the dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The Exchange's members are subject to ORF on other options markets.<sup>11</sup>

<sup>10</sup> The Exchange does not assess a Customer any transaction fees in Multiply Listed Options, except in SPY, and pays Customer rebates.

<sup>11</sup> The following options exchanges assess an ORF, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Inc., the International Securities Exchange, LLC ("ISE"), ISE Gemini, LLC, NYSE Arca, Inc., NYSE MKT, Inc., BATS Exchange, Inc., NASDAQ BX, Inc., The

#### *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>12</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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2017-02 on the subject line.

##### *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-2017-02. This file number should be included on the subject line if email 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 Web site (<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

NASDAQ Options Market LLC and Miami International Securities Exchange, LLC.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> The ORF is not charged for orders that clear in categories other than the Customer range at OCC (e.g., market maker orders) because members incur the costs of memberships and through their memberships are charged transaction fees, dues and other fees that go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

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 Web site 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-2017-02, and should be submitted on or before February 2, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Eduardo A. Aleman.**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79748; File No. SR-NYSE-2016-93]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List

January 6, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 30, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Price List to: (1) Revise the quoting, quoted size, and adding liquidity requirements for Designated Market Makers ("DMM") to qualify for certain rebates for providing liquidity on the Exchange; (2) introduce new rebates for DMMs for providing liquidity on the Exchange; and (3) change the monthly fees for the use of certain ports by DMMs. The Exchange proposes to implement these changes to its Price List effective January 3, 2017. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its Price List to: (1) Revise the quoting, quoted size, and adding liquidity requirements for DMMs to qualify for certain rebates for providing liquidity on the Exchange; (2) introduce new rebates for DMMs for providing liquidity on the Exchange; and (3) change the monthly fees for the use of certain ports by DMMs.

The Exchange proposes to implement these changes effective January 3, 2017.

###### DMMs

###### Quoting, Quoted Size, and Adding Liquidity Requirements

Currently, DMMs earn a rebate of \$0.0027 per share when adding liquidity with orders, other than Mid-Point Liquidity Orders ("MPL Order"), in More Active Securities<sup>4</sup> if the More

Active Security has a stock price of \$1.00 or more and the DMM meets the More Active Securities Quoting Requirement.<sup>5</sup>

In order to qualify for the \$0.0027 rebate per share, the Exchange proposes to require that DMMs also have a DMM Quoted Size for an applicable month that is at least 5% of the NYSE Quoted Size.<sup>6</sup>

Currently, DMMs earn a rebate of \$0.0031 per share when adding liquidity with orders, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of \$1.00 or more and the DMM meets (1) the More Active Securities Quoting Requirement, and (2) has a DMM Quoted Size for an applicable month that is at least 10% of the NYSE Quoted Size.

In order to qualify for the \$0.0031 rebate per share, the Exchange proposes to require that DMMs also quote at the NBBO in the applicable security at least 20% of the time in the applicable month and for providing liquidity that is more than 5% of the NYSE's total intraday adding liquidity in each such security for that month.<sup>7</sup>

Similarly, DMMs currently earn a rebate of \$0.0034 per share when adding liquidity with orders, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of \$1.00 or more and the DMM meets (1) the More Active Securities Quoting Requirement and (2) has a DMM Quoted Size for an applicable month that is at least 15% of the NYSE Quoted Size, for providing liquidity that is more than 15% of the NYSE's total intraday adding liquidity in each such security for that month.

In order to qualify for this \$0.0034 per share rebate, the Exchange proposes to require that DMMs also quote at the NBBO in the applicable security at least

previous month equal to or greater than 1,000,000 shares per month

<sup>5</sup> The "More Active Securities Quoting Requirement" is met if the More Active Security has a stock price of \$1.00 or more and the DMM quotes at the National Best Bid or Offer ("NBBO") in the applicable security at least 10% of the time in the applicable month.

<sup>6</sup> The "NYSE Quoted Size" is calculated by multiplying the average number of shares quoted on the NYSE at the NBBO by the percentage of time the NYSE had a quote posted at the NBBO. The "DMM Quoted Size" is calculated by multiplying the average number of shares of the applicable security quoted at the NBBO by the percentage of time during which the DMM quoted at the NBBO. See Price List, n. 7.

<sup>7</sup> The NYSE total intraday adding liquidity is totaled monthly and includes all NYSE adding liquidity, excluding NYSE open and NYSE close volume, by all NYSE participants, including Supplemental Liquidity Providers, customers, Floor brokers, and DMMs.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> "More Active Securities" are securities with an average daily consolidated volume ("ADV") in the