

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71257; File No. SR-Phlx-2014-03)

January 8, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Customer Rebate Program

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 3, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the Customer Rebate Program in Section B of the Pricing Schedule.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange proposes to amend certain Customer Rebate tier percentage thresholds and add a new tier to the "Customer Rebate Program," in Section B of the Pricing Schedule to provide members a greater opportunity to receive Customer rebates.

Currently, the Exchange has a Customer Rebate Program consisting of four tiers which pays Customer rebates on two Categories, A³ and B,⁴ of transactions.⁵ A Phlx member qualifies for a certain rebate tier based on the percentage of total national customer volume in multiply-listed options which it transacts monthly on Phlx. The Exchange calculates Customer volume in Multiply Listed Options by totaling electronically-delivered and executed volume, except

³ Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 3 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order are paid a rebate of \$0.14 per contract.

⁴ Category B rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II. Rebates are paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 3 or higher in the Customer Rebate Program, Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will be paid a rebate of \$0.17 per contract.

⁵ See Section B of the Pricing Schedule.

volume associated with electronic Qualified Contingent Cross (“QCC”) Orders,⁶ as defined in Exchange Rule 1080(o).⁷ The Exchange pays the following rebates:⁸

Customer Rebate Tiers	Percentage Thresholds of National Customer Volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options (Monthly)	Category A	Category B
Tier 1	0.00% - 0.75%	\$0.00	\$0.00
Tier 2	Above 0.75% - 1.60%	\$0.12*	\$0.17*
Tier 3	Above 1.60% - 2.50%	\$0.16	\$0.19
Tier 4	Above 2.50%	\$0.17	\$0.19

*The Exchange will pay a \$0.02 per contract rebate in addition to the applicable Tier 2 rebate to a Specialist or Market Maker or its affiliate under Common Ownership provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in Section II.

⁶ A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. See Rule 1080(o). See also Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx-2011-47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (“QCTs”) that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

⁷ Members and member organizations under common ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Common ownership means members or member organizations under 75% common ownership or control.

⁸ SPY is included in the calculation of Customer volume in Multiply Listed Options that are electronically-delivered and executed for purposes of the Customer Rebate Program, however, the rebates do not apply to electronic executions in SPY.

The Exchange proposes to amend Tier 1 of the Customer Rebate Program to lower the percentage threshold from 0.00% - 0.75% to 0.00% - 0.45%. The Exchange believes that lowering the percentage threshold in Tier 1 will continue to encourage market participants to direct a greater number of Customer orders to the Exchange to qualify for the rebate.

The Exchange proposes to adopt a new Tier 2 Customer rebate with a percentage threshold of above 0.45% - 1.00% and offer a Category A rebate of \$0.11 per contract and a Category B rebate of \$0.17 per contract. The Exchange believes that this new tier will continue to encourage market participants to direct a greater number of Customer orders to the Exchange to qualify for the rebate.

The Exchange proposes to amend the current Tier 2 rebate by renaming it “Tier 3” and amending the percentage threshold from above 0.75% - 1.60% to above 1.00% - 1.60%. The Exchange is increasing this rebate tier to account for the new Tier 2 rebate.

The Exchange proposes to rename current Tier 3 as Tier 4 and current Tier 4 as Tier 5 to account for the new rebate tier that is being proposed.

The Exchange proposes to amend rule text related to a current rebate which was recently added in November 2013.⁹ In that filing the Exchange amended the Pricing Schedule at Section B to offer a Specialist or Market Maker, or its affiliate under Common Ownership,¹⁰ provided the Specialist or Market Maker has reached the Monthly Market Maker Cap¹¹ as defined in

⁹ See Securities Exchange Act Release No. 70969 (December 3, 2013), 78 FR 73907 (December 9, 2013) (SR-Phlx-2013-114).

¹⁰ The term “Common Ownership” means members or member organizations under 75% common ownership or control.

¹¹ Specialists and Market Makers are subject to a “Monthly Market Maker Cap” of \$550,000 for: (i) electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or

Section II, an additional \$0.02 per contract rebate in addition to the applicable Tier 2 rebate if they qualified for the Tier 2 rebate (“\$0.02 Rebate”). The Exchange is proposing to amend the rule text to continue to refer to the current Tier 2 rebate which the Exchange is proposing to rename Tier 3. The rule text will be amended to also reflect the change to Tier 3 with respect to the “\$0.02 Rebate.” Further, the Exchange proposes to clarify the rule text by noting that the reference to “affiliate” with respect to the “\$0.02 Rebate is to a member or member organization affiliate. This relates back to the definition of Common Ownership which means members or member organizations under 75% common ownership or control.¹² The Exchange is proposing to add the words “member or member organization” before “affiliate” to make clear that the affiliate must be a member or member organization of Phlx.

The Exchange also proposes to amend Category A of Section B of the Pricing Schedule to amend the following sentence: [i]n the instance where member organizations qualify for Tier 3 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order are paid a rebate of \$0.14 per contract. The Exchange proposes to pay the \$0.14 per contract rebate in the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program. Similarly, the Exchange proposes to amend Category B of Section B

specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Section II) are excluded from the Monthly Market Maker Cap. In addition, Specialists or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Market Maker Cap are assessed a \$0.17 per contract fee.

¹² See the Preface of the Exchange’s Pricing Schedule which includes the definition of Common Ownership.

of the Pricing Schedule to amend the following sentence: [i]n the instance where member organizations qualify for Tier 3 or higher in the Customer Rebate Program, Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will be paid a rebate of \$0.17 per contract. The Exchange proposes to pay the \$0.17 per contract rebate in the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program. The Exchange added a new Tier 2 rebate to the Customer Rebate Program and is proposing to apply the higher rebates to the newly renamed Tier 4 rebate at this time to incentivize market participants to add a greater amount of Customer volume.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,¹⁴ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposal to lower the Tier 1 percentage threshold from 0.00% -0.75% to 0.00% - 0.45% is reasonable because the Exchange is proposing to adopt a Tier 2 rebate for volume between 0.45% - 1.00%. Members that currently qualify for a non-paying Tier 1 rebate by transacting greater than 0.75% of national customer volume in multiply listed equity and ETF options (excluding SPY) may qualify for the newly added Tier 2 rebate, which pays a Category A rebate of \$0.11 per contract and a Category B rebate of \$0.17 per contract, by transacting

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

greater than 0.45% of national customer volume in multiply listed equity and ETF options (excluding SPY). The Exchange believes that the new Tier 2 will offer members an opportunity to earn a Customer rebate because the volume threshold is lower with new Tier 2 than with current Tier 1.

The Exchange's proposal to lower the Tier 1 percentage threshold from 0.00% - 0.75% to 0.00% - 0.45% is equitable and not unfairly discriminatory because it will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the rebate provided they transact a qualifying amount of electronic Customer volume.

The Exchange's proposal to adopt a Tier 2 rebate of above 0.45% - 1.00% is reasonable because, as stated above, members that today do not earn a Customer Rebate in current Tier 1 may be able to qualify for the new Tier 2 rebate. Some members that currently qualify for the current Tier 2 (0.75% - 1.60%) rebate would receive a lower Category A rebate as the new Tier 2 rebate pays a Category A rebate of \$0.11 per contract and the current Tier 2 Category A rebate is \$0.12 per contract. The Category B rebate is \$0.17 per contract in both the current and proposed Tier 2. However, the volume requirement for the new Tier 2 rebate (0.45% - 1.00%) is lower than the current Tier 2 rebate (0.75% - 1.60%). The Exchange believes that despite the lower Category A rebate, the new Tier 2 will continue to encourage members to transact Customer orders on Phlx. Certain members that currently qualify for the current Tier 2 rebate will need to transact above 1.00% of national customer volume in multiply listed equity and ETF options (excluding SPY) to continue to receive the higher Category A rebate of \$0.12 per contract. In addition Specialists and Market Makers that currently qualify for the \$0.02 Rebate will need to transact the increased volume of at least 1.00% of national customer volume in multiply listed equity and ETF options (excluding SPY) to qualify for the \$0.02 Rebate. The Exchange believes

that members will be encouraged to transact a greater number of Customer contracts to receive higher rebates, despite the reduced Category A rebate with the new Tier 2.

The Exchange's proposal to adopt a new Tier 2 rebate of above 0.45% - 1.00% is equitable and not unfairly discriminatory because it will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the rebate provided they transact a qualifying amount of electronic Customer volume.

The Exchange's proposal to increase the current Tier 3 rebate from above 0.75% - 1.60% to above 1.00% - 1.60% is reasonable because it should incentivize members to direct a greater number of Customer orders to the Exchange to qualify for the newly named Tier 3 rebate. As explained above, certain members that currently qualify for the current Tier 2 rebate will need to transact above 1.00% of national customer volume in multiply listed equity and ETF options (excluding SPY) to continue to receive the higher Category A rebate of \$0.12 per contract.¹⁵ The Exchange believes that members will be encouraged to transact a greater number of Customer contracts to receive the higher Category A rebate in newly named Tier 3. In addition Specialists and Market Makers that currently qualify for the \$0.02 Rebate will need to transact the increased volume of at least 1.00% of national customer volume in multiply listed equity and ETF options (excluding SPY) to qualify for the \$0.02 Rebate. This should also incentivize Specialists and Market Makers to transact a greater number of Customer orders on the Exchange. Phlx offers members certain Customer rebates to encourage Phlx member organizations to direct Customer order flow to the Exchange, and the \$0.02 Rebate provides an additional incentive for Customer order flow. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these

¹⁵ The Category B rebate is \$0.17 per contract with new Tier 2 and newly named Tier 3.

market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to increase the current Tier 3 rebate from above 0.75% - 1.60% to above 1.00% - 1.60% is equitable and not unfairly discriminatory because it will be applied to all market participants in a uniform matter. All members are eligible to receive the rebate provided they submit a qualifying number of electronic Customer volume.

The Exchange's proposal to renumber the Customer Rebate Tiers to accommodate the new Tier 2 is reasonable, equitable and not unfairly discriminatory to clarify the Pricing Schedule.

The Exchange's proposal to add the words "member or member organization" before "affiliate" is reasonable, equitable and not unfairly discriminatory because the addition of these words further clarifies the intent of the \$0.02 Rebate to apply to affiliates that are members or member organizations of the Exchange. The proposed amendment is not substantive as this is the manner in which the Common Ownership is applied today.

The Exchange's proposal to replace Tier 3 with Tier 4 in order to receive the higher Category A rebate of \$0.14 per contract or the higher Category B rebate of \$0.17 per contract in the instance where member organizations qualify for Tier 3 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order or member organizations qualify for Tier 3 or higher in the Customer Rebate Program, Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order, respectively, is reasonable to encourage market participants to add a greater amount of Customer volume on Phlx. The Exchange believes that members will be encouraged to transact a greater amount of Customer volume to obtain the higher rebates.

The Exchange believes that replacing Tier 3 with Tier 4 in order to receive the higher Category A rebate of \$0.14 per contract or the higher Category B rebate of \$0.17 is equitable and not unfairly discriminatory because the Exchange will pay rebates to all market participants in a uniform manner provided they meet the requirements to obtain the higher rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose an undue burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the Customer Rebate Program will continue to encourage Customer order flow to be directed to the Exchange. By incentivizing members to route Customer orders, the Exchange desires to attract liquidity to the Exchange, which in turn benefits all market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. All market participants are eligible to qualify for a Customer Rebate.

The Exchange believes the proposed amendments would allow market participants to qualify for the new Tier 2 rebate and possibly higher rebates if they direct a qualifying number of Customer orders to the Exchange. The Exchange believes this pricing amendment does not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange. A market participant requires less Customer volume with this proposal to earn a Customer rebate. The current Tier 2 rebate requires above 0.75% of national customer volume in multiply listed equity and ETF options (excluding SPY) while the new Tier 2 rebate requires above 0.45% of national customer volume in multiply listed equity

and ETF options (excluding SPY). While some participants will be required to transact a greater number of Customer orders to continue to earn the newly named Tier 3 Category A rebate, the Exchange believes that members will be encouraged to transact a greater number of Customer contracts to receive the higher rebate, which will promote competition.

In addition Specialists and Market Makers that currently qualify for the \$0.02 Rebate will need to transact the increased volume of at least 1.00% of national customer volume in multiply listed equity and ETF options (excluding SPY) to qualify for the \$0.02 Rebate. This proposal should incentivize Specialists and Market Makers to transact a greater number of Customer orders on the Exchange to achieve the \$0.02 Rebate and therefore would not create an undue burden on competition, but would instead encourage competition.

The Exchange believes that replacing Tier 3 with Tier 4 in order to receive the higher Category A rebate of \$0.14 per contract or the higher Category B rebate of \$0.17 does not impose an undue burden on competition because the Exchange will pay the higher rebate to all market participants that qualify for the rebate and the rebate is intended to promote competition by encouraging market participants to transact a greater number of Customer orders.

The remainder of the proposed amendments are clarifying and would not impose an undue burden on competition.

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 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 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.¹⁶ 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. Please include File Number SR-Phlx-2014-03 on the subject line.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2014-03. 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, D.C. 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 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-2014-03, 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).