

submission of the PCAOB budget and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB's ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to furnish on a quarterly basis certain budget-related information, and a list of definitions that apply to the rule and to general discussions of PCAOB budget matters.

In accordance with the budget rule, in March 2012 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2013 budget year. In response, the Commission provided the PCAOB with economic assumptions and budgetary guidance for the 2013 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. Staff from the Commission's Offices of the Chief Accountant and Financial Management dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects and budget estimates; reviewed the PCAOB's estimates of 2012 actual spending; and attended several meetings with management and staff of the PCAOB to further develop an understanding of the PCAOB's budget and operations. During the course of this review, Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this review, the Commission issued a "pass back" letter to the PCAOB. On November 28, 2012, the PCAOB approved its 2013 budget during an open meeting, and subsequently submitted that budget to the Commission for approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2013 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2013 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2013. The Commission also acknowledges the PCAOB's updated strategic plan and is supportive of the Board's plans to begin work on its six new near-term priority projects. The Commission encourages the PCAOB to keep the Commission and its staff apprised of developments throughout the implementation of these near-term projects and looks forward to providing

views to the PCAOB as future updates are made to the plan.

The Commission understands that over the past year, the PCAOB has taken significant and productive steps to improve its information technology ("IT") program. These steps include IT staffing changes, implementing stronger IT governance structures, and strengthening Board oversight over its IT program. Based upon updates provided by the PCAOB, the Commission also understands that these efforts are ongoing; and directs the Board to continue to provide in its quarterly reports to the Commission detailed information about the state of the PCAOB's IT program, including planned, estimated, and actual costs for IT projects, and the level of involvement of consultants. These reports also should continue to include: (a) A discussion of the Board's assessment of the progress and implementation of the Board actions mentioned above; and (b) the quarterly IT report that will be prepared by PCAOB staff and submitted to the Board.

The Commission also directs the PCAOB during the 2013 budget cycle to continue to include in its quarterly reports to the Commission information about the PCAOB's inspections program. Such information is to include: (a) Statistics relative to the numbers and types of firms budgeted and expected to be inspected in 2013, including by location and by year the inspections that are required to be conducted in accordance with the Sarbanes-Oxley Act and PCAOB rules; (b) information about the timing of the issuance of inspections reports for domestic and non-U.S. inspections; and (c) updates on the PCAOB's efforts to establish cooperative arrangements with respective non-U.S. authorities for inspections required in those countries.

The Commission understands that the Office of Management and Budget ("OMB") has determined the 2013 budget of the PCAOB to be sequestrable under the Budget Control Act of 2011.<sup>4</sup> Unless legislation occurs that avoids sequestration, the PCAOB's 2013 spending level could be reduced by an amount that would be determined by OMB. In the event that sequestration is not avoided and OMB does not alter its determination that the PCAOB's 2013 budget is sequestrable, we expect the PCAOB to work with the Commission and Commission staff as appropriate regarding implementation of

<sup>4</sup> See "OMB Report Pursuant to the Sequestration Transparency Act of 2012" (Pub. L. 112-155), page 218 of 224 at: [http://www.whitehouse.gov/sites/default/files/omb/assets/legislative\\_reports/stareport.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/stareport.pdf).

sequestration. In that event, the Commission also directs the PCAOB to provide the Commission with reports detailing the PCAOB's plans for implementation of sequestration, including how it will impact the PCAOB's 2013 spending for each of the PCAOB's program areas and cost categories.

The Commission has determined that the PCAOB's 2013 budget and annual accounting support fee are consistent with Section 109 of the Sarbanes-Oxley Act. Accordingly,

*It is ordered*, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB budget and annual accounting support fee for calendar year 2013 are approved.

By the Commission.

**Elizabeth M. Murphy**,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68924; File No. SR-Phlx-2013-13]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to its Customer Rebate Program and Other Technical Amendments

February 13, 2013.

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 February 1, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("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 A, entitled "Customer Rebate Program." The Exchange also proposes technical amendments to the Preface, Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols," Section II, entitled "Multiply

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

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

Listed Options Fees”<sup>3</sup> and Section IV entitled “PIXL<sup>4</sup> Pricing” of the Pricing Schedule.

The text of the proposed rule change is provided in *Exhibit 5*. The text of the proposed rule change is also available on the Exchange’s Web site 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 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 Customer Rebate Program to incentivize market participants to increase the amount of Customer order flow they transact on the Exchange. The Exchange also proposes to amend and add certain rule text in the Pricing Schedule to provide additional clarity to the Pricing Schedule.

Customer Rebate Program

Currently, the Exchange pays Customer Rebates by calculating an Average Daily Volume Threshold. The Exchange calculates the Average Daily Volume Threshold by totaling Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o) (“Threshold

Volume”). Rebates are paid on Threshold Volume.

The Exchange is proposing to base the Customer Rebate Program on certain “Rebate Tiers.” The Exchange proposes to replace the current three tier structure, which pays rebates based on the number of contracts transacted in a month based on four Categories (A, B, C and D) of transactions, with a four tier structure. The four tier structure would pay rebates based on percentage thresholds of national customer multiply-listed options volume by month based on the same four Categories (A, B, C and D) of transactions. Specifically, the Exchange would base a market participant’s qualification for a certain Rebate Tier on the percentage of total national customer volume in multiply-listed options which are transacted monthly on Phlx. The Exchange proposes to establish a four tier Customer rebate structure with a column entitled “Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly).” The Exchange proposes the following Customer Rebate Tiers by percentages:

Customer rebate tiers	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Category A	Category B	Category C	Category D
Tier 1 .....	0.00%–0.75% .....	\$0.00	\$0.00	\$0.00	\$0.00
Tier 2 .....	Above 0.75%–1.60% .....	0.11	0.12	0.13	0.08
Tier 3 .....	Above 1.60%–2.60% .....	0.13	0.13	0.14	0.08
Tier 4 .....	Above 2.60% .....	0.15	0.15	0.15	0.09

The Exchange believes that replacing the current tiers which require market participants to qualify for Customer Rebates based on a certain number contracts transacted in a month with a tier structure based on relative contracts per month as a percentage of total national customer volume in multiply-listed options transacted on Phlx would serve to control and account for industry-wide movements.

The Exchange is not proposing to amend the criteria to qualify for a certain rebate Category (A, B, C or D). These will remain the same pursuant to this proposal.<sup>5</sup> In addition, the Exchange would continue to total Customer volume in Multiply Listed Options (including Select Symbols) that

are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o) in the same manner.<sup>6</sup> The Exchange proposes to remove references to the Average Daily Volume Threshold and replace those references with Customer Rebate Tier references. The Exchange also proposes to permit members and member organizations under common ownership to aggregate their volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Common ownership, which the Exchange is proposing to define in the Preface to the Pricing Schedule as described in more detail below, shall mean 75% common ownership or control.

The Exchange is proposing to amend the rebates paid to market participants with this proposal. Currently, Categories A, B, C and D receive no rebate for volume between 0 to 99,999 contracts in a month. The Exchange proposes to pay Categories A, B, C and D no rebate with proposed Tier 1 which is between 0.00% to 0.75% of national customer volume in multiply-listed options classes. Currently, the Exchange pays the following rebates for Tier 2 volume which is between 100,000 and 349,999 contracts in a month: Category A: \$0.10, Category B: \$0.12, Category C: \$0.13 and Category D: \$0.05. The Exchange would pay the following rebates for new Tier 2 for a percentage of national customer volume in multiply-listed options

<sup>3</sup>Multiply Listed Options Fees include options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

<sup>4</sup>PIXL is the Exchange’s price improvement mechanism known as Price Improvement XL or (PIXL<sup>SM</sup>). See Rule 1080(n).

<sup>5</sup>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. Rebates are paid on PIXL Orders in Section II symbols that execute against non-Initiating Order interest. 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. Category C rebates are paid to members executing electronically-delivered Customer Complex Orders

in Select Symbols in Section I. Category D rebates will be paid to members executing electronically-delivered Customer Simple Orders in Select Symbols in Section I. Rebates are paid on PIXL Orders in Section I symbols that execute against non-Initiating Order interest.

<sup>6</sup>For clarity, the Exchange will calculate volume and pay rebates based on a member organization’s Phlx house account numbers.

classes above 0.75% to 1.60%: Category A: \$0.11, Category B: \$0.12, Category C: \$0.13 and Category D: \$0.08. Currently, the Exchange pays the following rebates for Tier 3 volume which is over 350,000 contracts in a month: Category A: \$0.15, Category B: \$0.15, Category C: \$0.15 and Category D: \$0.07. The Exchange would pay the following rebates for new Tier 3 for a percentage of national customer volume in multiply-listed options classes above 1.60% to 2.60%: Category A: \$0.13, Category B: \$0.13, Category C: \$0.14 and Category D: \$0.08. The Exchange would pay the following rebates for new Tier 4 for a percentage of national customer volume in multiply-listed options classes above 2.60%: Category A: \$0.15, Category B: \$0.15, Category C: \$0.15 and Category D: \$0.09. By way of example, a market participant that executes 3,000,000 electronically-delivered Customer Simple Order contracts in Select Symbols, which are Multiply Listed Options, in a given month where 150,000,000 national customer multiply-listed options contracts were executed would receive a credit of \$240,000. The market participant would have qualified for this rebate because the number of qualifying contracts<sup>7</sup> executed on Phlx represents 2% of the total national customer multiply-listed options volume and because the Customers orders were Simple Orders in Select Symbols, the Category D rate in Tier 3 of \$0.08 per contract would be applied to the 3,000,000 Customer contracts.

Finally, today, member organizations qualifying for either a Tier 2 or Tier 3 rebate are entitled to receive a credit of \$0.04 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to NASDAQ OMX BX, Inc. ("BX Options") or the NASDAQ Options Market ("NOM"). Today, a member organization qualifying for either a Tier 2 or Tier 3 rebate is entitled to receive a credit of \$0.10 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if the Customer order is routed to an away market other than BX Options or NOM.

The Exchange proposes to amend the qualifying tiers from Tier 2 or 3 to Tiers 2, 3 or 4 to receive credits to the various away markets. The Exchange also proposes to amend the credit that will be paid per contract to \$0.10 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to NOM and \$0.05 per contract credit

<sup>7</sup> Presuming the contracts are not electronic QCC Orders as defined in Rule 1080(o).

toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to BX Options. A member organization qualifying for a Tier 2, 3 or 4 rebate is entitled to a credit of \$0.16 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if the Customer order is routed to an away market other than BX Options or NOM, unless the away market transaction fee is \$0.00 or a rebate is paid by the away market, in which case the credit would be reduced to \$0.11 per contract. The Exchange believes that offering credits toward Routing Fees will continue to incentivize market participants to transact a greater number of Customer orders on the Exchange.

#### Technical Amendments

First, the Exchange utilizes the term "common ownership" throughout the Pricing Schedule and defines common ownership as 75% common ownership or control among members and member organizations.<sup>8</sup> The Exchange proposes to amend the Preface of the Pricing Schedule to define "Common Ownership" for purposes of pricing. The Exchange also proposes to revise Sections II, IV and VI of the Pricing Schedule to simply refer to the defined term "Common Ownership" and eliminate the definitions throughout the rule text which reflect the same 75% common ownership or control language.

Second, the Exchange proposes to amend Section I of the Pricing Schedule to add the words "Complex Order" prior to the language discussing the Pilot Program related to the \$0.05 per contract fee differential for Fees for Removing Liquidity for Specialists and Market Makers that transact against a Customer order directed to them. The Exchange received approval for a Pilot Program which commenced on December 1, 2012.<sup>9</sup> The Exchange believes the addition of the words "Complex Order" further clarifies the Pricing Schedule. The fee differential for directed orders applies to Complex Orders and does not apply to Simple Orders.

Third, the Exchange proposes to amend the Section II Monthly Market Maker Cap rule text to specify that the Monthly Market Maker Cap applies to electronic and floor transactions. The Exchange proposes to remove the word

<sup>8</sup> See Sections II, IV and VI of the Pricing Schedule.

<sup>9</sup> See Securities Exchange Release No. 66884 (April 30, 2012), 77 FR 26595 (May 4, 2012) (SR-Phlx-2012-27 and SR-Phlx-2012-54). See also Securities Exchange Act Release No. 68376 (December 6, 2012), 77 FR 74039 (December 12, 2012) (SR-Phlx-2012-139).

"equity" from this paragraph as that word is not necessary. Also, the Exchange proposes to refer to Options Transaction Charges instead of "fees" in that same paragraph for consistency.

Fourth, the Exchange proposes to remove the rule text describing the common ownership in Section IV because the Exchange has proposed herein to permit members and member organization under common ownership to aggregate Customer Rebate volume in Section A. The Exchange proposes to include rule text to permit any member or member organization under common ownership with another member or member organization that qualifies for a Customer Rebate Tier discount in Section A to receive the discounted PIXL Initiating Order discount as proposed herein. For example, if Phlx member A qualifies for a Tier 5 [sic] Customer Rebate pursuant to Section A of the Pricing Schedule, Phlx member B, an affiliate of member A and 75% commonly owned by the same parent, would be entitled to the discounted Initiating Order Fee of \$0.05 per contract. The Exchange would utilize the proposed defined term "Common Ownership" in this section.

Fifth, the Exchange proposes to clarify in Section IV of the Pricing Schedule that with respect to PIXL Order executions in Section I Select Symbols,<sup>10</sup> the pricing specified in Section IV is in addition to other fees and rebates in Section I, including Payment for Order Flow fees where appropriate. The Exchange makes a similar statement in Section IV, Part A with respect to Section II PIXL fees and proposes this additional language for consistency and clarity.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>12</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

### Customer Rebate Program

The Exchange's proposal to convert the qualification for the rebate tiers from measuring a market participant's per month Average Daily Contract Volume to relative contracts per month based on national customer volume in multiply-listed options classes executed on Phlx

<sup>10</sup> Select Symbols are defined in Section I of the Pricing Schedule.

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

<sup>12</sup> 15 U.S.C. 78f(b)(4).

is reasonable because it allows the Exchange to control and account for changes in the national industry-wide customer multiply-listed options volume. Further, it will still allow market participants to receive rebates on Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as is the case today. The Exchange believes that the amended Customer Rebate Program should incentivize market participants to increase the amount of Customer orders that are transacted on the Exchange to obtain a rebate. In addition, other exchanges employ similar incentive programs.<sup>13</sup>

The Exchange's proposal to convert the qualification for the rebate tiers from measuring a market participant's per month Average Daily Contract Volume to relative contracts per month based on national customer volume in multiply-listed options classes executed on Phlx 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 is merely amending the measuring stick that it utilized to determine the amount of qualifying volume. The Exchange would account for changes in industry-wide volume with the amendment.

The Exchange believes that amending the rebates offered in Categories A, B, C and D is reasonable because with respect to Tier 1, the Exchange would continue to not offer a rebate to market participants. The Exchange is also adding several new tiers which allow market participants the opportunity to achieve higher rebates in Category A and substantially the same and higher rebates in Categories B, C and D. With respect to Tiers 2, 3, and 4, the Exchange believes that it is providing market participants the opportunity to earn higher rebates. Proposed Tier 2 rebates are the same or higher than the Tier 2 rebates today. Proposed Tier 3 rebates are slightly lower than the current Tier 3 rebates. Proposed Tier 4

<sup>13</sup> See the Chicago Board Options Exchange, Incorporated's ("CBOE") Fees Schedule. CBOE offers each Trading Permit Holder ("TPH") a credit for each public customer order transmitted by the TPH which is executed electronically in all multiply-listed option classes, excluding QCC trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan, provided the TPH meets certain percentage thresholds in a month as described in the Volume Incentive Program.

rebates are the same or higher than the current Tier 3 rebates, which today are the highest rebates that a market participant can achieve under the program. The Exchange is unable to specify with certainty which tier would apply to participants that are executing a certain amount of Customer volume today. The Exchange believes that the rebates proposed herein are reasonable because market participants may be able to obtain higher rebates beyond Tier 1 if they are able to qualify for a higher tier as compared to today's tiers with the proposed method of percentages of national customer volume.

The Exchange believes that amending the rebates offered in Categories A, B, C and D is equitable and not unfairly discriminatory because the rebates 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 believes that permitting members and member organizations to aggregate their volume if they are under common ownership, defined as 75% common ownership or control, is reasonable because the Exchange desires to provide all market participants the ability to obtain Customer Rebates. The Exchange believes that permitting members and member organizations to aggregate their volume if they are under common ownership is equitable and not unfairly discriminatory because the Exchange would permit all market participants the ability to aggregate for purposes of receiving the Customer Rebate even if certain members and member organizations chose to operate under separate entities. The Exchange currently permits such aggregation in the calculation of the Monthly Market Maker Cap and for purposes of PIXL fees.<sup>14</sup>

The Exchange's proposal to further reduce Routing Fees<sup>15</sup> in Section V of

<sup>14</sup> See Section II of the Pricing Schedule. Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$550,000 for: (i) Equity option transaction fees; (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 specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is at least 75% common ownership between the member organizations. See also Section IV of the Pricing Schedule. For purposes of the PIXL Initiating Order members and member organizations under common ownership may aggregate their Customer Rebate Program volume.

<sup>15</sup> Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to

the Exchange's Pricing Schedule for member organizations that qualify for Tiers 2, 3 or 4 in the Customer Rebate Program in Section A of the Pricing Schedule is reasonable because the Exchange proposes to provide an additional incentive for transacting Customer orders on the Exchange. By offering member organizations a credit toward the cost of routing to an away market, the Exchange is seeking to encourage market participants to transact a greater number of Customer orders on Phlx which liquidity benefits all market participants. In addition, the Exchange is offering the credit toward Customer Routing Fees in addition to the Customer rebate received for the qualifying Customer Rebate Tier.

The Exchange believes that providing a credit of \$0.10 per contract toward the Customer Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to NOM and a \$0.05 per contract credit toward the Customer Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to BX Options is equitable and not unfairly discriminatory because NOM does not pay a Customer Rebate to Remove Liquidity and BX Options pays a Rebate to Remove Liquidity.<sup>16</sup> The Exchange believes that paying a \$0.16 per contract credit toward the Routing Fee specified in Section V of the Pricing Schedule if a member organization qualifies for a Tier 2, 3 or 4 rebate if the Customer order is routed to away market other than BX Options or NOM unless the away market transaction fee is \$0.00 or a rebate is paid by the away market, in which case \$0.11 per contract would be paid, is equitable and not unfairly discriminatory because the Exchange assesses an \$0.11 per contract fixed cost in addition to the away market transaction fee to route to an away market other than NOM or BX Options. The Exchange is offering a credit of \$0.16 per contract in those cases where there is an away market transaction fee or a rebate is not offered by the away market. When no transaction fee is assessed by the away market, the

the Exchange include clearing costs, administrative and technical costs associated with operating NOS that are assessed on the Exchange, membership fees at away markets, and technical costs associated with routing options. The Routing Fees enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of orders by the away market.

<sup>16</sup> BX Options pays a \$0.32 per contract Customer Rebate to Remove Liquidity in Penny Pilot Options, a \$0.70 Customer Rebate to Remove Liquidity in Non-Penny Pilot Options (other than IWM, QQQ and SPY) and a \$0.12 per contract Customer Rebate to Remove Liquidity in IWM, QQQ and SPY. See Chapter XV, Section 2(1) of the BX Options Rules.

Exchange would only assess the \$0.11 per contract fixed fee and thus the member organization would recoup the fee assessed by the Exchange. If the away market pays a rebate to remove liquidity, the Exchange assesses the member organization the fixed fee of \$0.11 per contract, the away market transaction fee and then credits the member organization the rebate offered by the Exchange. In that case, the Exchange would pay the reduced \$0.11 per contract credit because the member organization has the benefit of the rebate from the away market. The Exchange also believes that the proposed credits are equitable and not unfairly discriminatory because any market participant that transacts Customer orders may qualify for the credit.

Finally, the Exchange believes that offering member organizations a lower credit for Routing to NOM and BX Options as compared to other away markets is equitable and not unfairly discriminatory because the fixed cost associated with Routing Fees in Section V of the Pricing Schedule are lower for a Customer order routed to NOM or BX Options (\$0.05 per contract) as compared to the fixed cost to route to an away market other than BX Options or NOM (\$0.11 per contract).<sup>17</sup>

#### Technical Amendments

The Exchange's proposal to amend certain rule text in the Pricing Schedule to provide additional clarity, such as defining Common Ownership in the Preface to the Pricing Schedule and adding and amending other language to indicate the Monthly Market Maker Cap applies to electronic and floor transactions, and clarifying that the pricing specified in Section IV is in addition to other fees and rebates in Section I, including Payment for Order Flow fees where appropriate, is reasonable, equitable and not unfairly discriminatory because the amendments further clarify the Pricing Schedule.

<sup>17</sup> The Exchange assesses a fixed fee of \$0.11 per contract for non-NASDAQ OMX exchanges and a \$0.05 per contract fee for BX Options and NOM. These fixed costs represent overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, which are in addition to the transaction fee assessed by the away market. Also, market participants whose orders routed to away markets are entitled to receive rebates offered by away markets, which rebates would net against fees assessed by the Exchange for routing orders. As explained in a previous rule change, the actual cash outlays for the Exchange to route to BX Options and NOM is lower as compared to routing to other non-NASDAQ OMX exchanges. See Securities Exchange Act Release Nos. 68213 (November 13, 2012), 77 FR 69530 (November 19, 2012) (SR-Phlx-2012-129) and 68698 (January 18, 2013), 78 FR 5530 (January 25, 2013) (SR-Phlx-2013-04). See also Section V of the Pricing Schedule.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to amend Section I of the Pricing Schedule to add the words "Complex Orders" prior to the language discussing the Pilot Program related to the \$0.05 per contract fee differential for Fees for Removing Liquidity for Specialists and Market Makers that transact against a Customer order directed to them because the addition of the words "Complex Order" further clarifies the Pricing Schedule.

Finally, the Exchange believes that amending Section IV to permit a member or member organization under common ownership, defined as 75% common ownership or control, with another member or member organization that qualifies for a Customer Rebate Tier in Section A to receive discounted PIXL fees is reasonable because the Exchange desires to provide all market participants the ability to obtain discounted PIXL pricing. The Exchange currently permits aggregation under common ownership in Section IV for purposes of calculating the Threshold Volume. The Exchange believes that permitting members and member organizations that are affiliated and under common ownership to realize discounted pricing by allowing one firm to qualify for a Customer Rebate Tier and another affiliated member or member organization under common ownership to realize the discount is equitable and not unfairly discriminatory because the Exchange would permit all market participants the ability to aggregate the benefits of their trading activity for purposes of the Customer Rebate, as is the case today, even if certain members and member organizations chose to operate under separate entities. The Exchange currently permits such aggregation in the calculation of the Monthly Market Maker Cap and for purposes of PIXL fees.<sup>18</sup>

#### 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 believes that the Customer Rebate Program will encourage Customer order flow to be directed to the Exchange, which will benefit all market participants. By incentivizing members to route Customer orders, the Exchange desires to attract Customer orders which benefits all market participants by increasing liquidity on

<sup>18</sup> See *supra* note 14.

the Exchange. All market participants are eligible to qualify for a Customer Rebate. The Exchange believes these pricing amendments do not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange.

The Exchange operates in a highly competitive market, comprised of eleven 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.<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

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

• Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–Phlx–2013–13 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–2013–13. 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 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–2013–13 and should be submitted on or before March 13, 2013.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68919; File No. SR–ISE–2013–08]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Amend the Minimum Trading Increments for Mini Options

February 13, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on February 6, 2013, the International Securities Exchange, LLC (“Exchange” or “ISE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 Substance of the Proposed Rule Change

The Exchange proposes to permit the minimum trading increment for Mini Options to be the same as the minimum trading increment permitted for standard options on the same underlying security. The text of the proposed rule change is available on the Exchange's Web site [www.ise.com](http://www.ise.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 self-regulatory organization 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

ISE proposes to amend its rules to permit the minimum trading increment for Mini Options to be the same as the minimum trading increment permitted for standard options on the same underlying security. Mini Options overlie 10 equity or ETF shares, rather than the standard 100 shares.<sup>3</sup> Mini Options are currently approved on the following five (5) underlying securities: SPDR S&P 500 ETF (“SPY”), Apple Inc. (“AAPL”), SPDR Gold Trust (“GLD”), Google Inc. (“GOOG”), and Amazon.com, Inc. (“AMZN”). Of the five securities on which Mini Options are permitted, four of them (SPY, AAPL, GLD and AMZN) participate in the Penny Pilot Program.<sup>4</sup> Under the Penny Pilot Program, with the exception of three classes,<sup>5</sup> the minimum price variation for all participating options classes is \$0.01 for all quotations in options series that are quoted at less than \$3 per contract and \$0.05 for all quotations in options series that are quoted at \$3 per contract or greater. Therefore, the minimum trading increment for AAPL, GLD, and AMZN is \$0.01 for option series under \$3 and \$0.05 for options quoted at \$3 or greater, while the minimum trading increment for SPY, which is not subject to a price test, is \$0.01 across all option series. The Exchange notes that GOOG is not in the Penny Pilot Program and therefore, standard options in GOOG have a minimum increment of \$0.05 and \$0.10

<sup>3</sup> Mini Options were approved for trading on September 28, 2012. See Securities Exchange Act Release No. 67948 (September 28, 2012), 77 FR 60735 (October 4, 2012) (Approving SR–ISE–2012–58). The Exchange expects to begin trading Mini Options on March 18, 2013.

<sup>4</sup> The Penny Pilot Program, which permits certain options series to be quoted and traded in increments of \$0.01, began on January 26, 2007. See Securities Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007). The Penny Pilot Program has since been extended a number of times and is currently in place through June 30, 2013. See Securities Exchange Act Release Nos. 56151 (July 26, 2007), 72 FR 42452 (August 2, 2007); 56564 (September 27, 2007), 72 FR 56412 (October 3, 2007); 57508 (March 17, 2008), 73 FR 15243 (March 21, 2008); 59633 (March 26, 2009), 74 FR 15018 (April 2, 2009); 60222 (July 1, 2009), 74 FR 32994 (July 9, 2009); 60865 (October 22, 2009), 74 FR 55880 (October 29, 2009); 63437 (December 6, 2010), 75 FR 77032 (December 10, 2010); 65968 (December 15, 2011), 76 FR 79723 (December 22, 2011); 67323 (June 29, 2012), 77 FR 40121 (July 6, 2012); and 68424 (December 13, 2012), 77 FR 75241 (December 19, 2012).

<sup>5</sup> The three classes are the Nasdaq–100 Index Tracking Stock (“QQQQ”), the SPDR S&P 500 ETF (“SPY”) and the iShares Russell 2000 Index Fund (“IWM”). QQQQ, SPY and IWM are quoted in \$0.01 increments for all options series.

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>20</sup> 17 CFR 200.30–3(a)(12).