

products,<sup>23</sup> a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing. As noted above, the proposed subscriber and access fees for NYSE ArcaBook are generally lower than or the same as the subscriber and access fees charged by other exchanges such as NYSE and NASDAQ for comparable products.<sup>24</sup>

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS, and Direct Edge. Today, BATS and Direct Edge provide certain market data at no charge on their Web sites in order to attract more order flow, and use revenue rebates from resulting additional executions to maintain low execution charges for their users.<sup>25</sup>

Further, data products are valuable to certain end users only insofar as they provide information that end users expect will assist them or their customers. The Exchange believes that only vendors and subscribers that expect to derive a reasonable benefit from the ArcaBook will choose to pay the attendant monthly fees.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a

specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>26</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>27</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2014-12 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-NYSEArca-2014-12. 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-NYSEArca-2014-12 and should be submitted on or before March 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-02874 Filed 2-10-14; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-71491; File No. SR-Phlx-2014-06]

### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Pricing for SPY Options**

February 5, 2014.

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 29, 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

<sup>28</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>23</sup> See *supra* notes 13-15.

<sup>24</sup> *Id.*

<sup>25</sup> This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

<sup>26</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>27</sup> 17 CFR 240.19b-4(f)(2).

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 Exchange's Pricing Schedule to amend Simple Order pricing in Section I, entitled Rebates and Fees for Adding and Removing Liquidity in SPY.<sup>3</sup>

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on February 3, 2014.

The text of the proposed rule change is 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 Exchange is proposing to amend the Simple Order Fees for Removing Liquidity in Section I applicable to transactions overlying SPY. The Exchange currently assesses Customers, Specialists,<sup>4</sup> Market Makers,<sup>5</sup> Firms,<sup>6</sup>

<sup>3</sup>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.

<sup>4</sup>A "Specialist" is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>5</sup>A "Market Maker" includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (see Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

<sup>6</sup>The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation.

Broker-Dealers<sup>7</sup> and Professionals<sup>8</sup> a \$0.45 per contract Fee for Removing Liquidity in SPY Simple Orders. The Exchange is proposing to increase the Fee for Removing Liquidity in SPY Simple Orders from \$0.45 to \$0.47 per contract for all market participants. Despite the increased fees, the Exchange believes that these fees remain competitive with other exchanges.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Section 6(b)(4) and 6(b)(5) of the Act,<sup>10</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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposal to increase the Fee for Removing Liquidity in Simple Orders for options overlying SPY from \$0.45 to \$0.47 per contract for all market participants is reasonable because the increase is consistent with or less than rates assessed by other options exchanges, such as Topaz Exchange, LLC ("Gemini"), NYSE Arca, Inc. ("NYSE Arca"), BATS Exchange, Inc. ("BATS") and NASDAQ Options Market LLC ("NOM").<sup>11</sup> The Exchange believes that its Fees for Removing Liquidity remain competitive

<sup>7</sup>The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

<sup>8</sup>The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

<sup>9</sup>15 U.S.C. 78f.

<sup>10</sup>15 U.S.C. 78f(b)(4) and (5).

<sup>11</sup>See Gemini's Fee Schedule. Gemini assesses taker fees for Priority Customer of \$0.45 per contract and \$0.48 per contract for all market participants. See NYSE Arca fees Schedule. NYSE Arca assesses all non-customer market participants a take liquidity fee of \$0.48 per contract. Customers are assessed \$0.45 per contract for removing liquidity. Gemini permits its members to lower certain of these fees provided they meet certain criteria. See BATS BZX Exchange Fee Schedule. BATS assesses a \$0.48 charge per contract for a Professional, Firm or Market Maker order that removes liquidity and \$0.47 per contract for a Customer order that removes liquidity. BATS permits its members to lower certain of these fees provided they meet certain criteria. See NOM Rules at Chapter XV, Section 2. NOM assesses \$0.45 per contract for a Customer to remove liquidity and \$0.49 per contract for all other market participants, except NOM Market Makers who are assessed \$0.48 per contract. NOM Participants are provided the ability to reduce certain fees provided they add requisite liquidity.

with other options markets. While the Exchange is increasing these fees, these transactions are included in the calculation of Customer volume for purposes of qualifying for Customer Rebates in Section B of the Pricing Schedule.

The Exchange's proposal to increase the Fee for Removing Liquidity in Simple Orders for options overlying SPY from \$0.45 to \$0.47 per contract for all market participants is equitable and not unfairly discriminatory because all market participants will be assessed a uniform Fee for Removing Liquidity in Simple Orders for options overlying SPY of \$0.47 per contract. The Exchange is assessing all market participants the same fee for removing liquidity in Simple Orders in SPY.

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

Phlx 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 increasing the SPY Simple Order Fees for Removing Liquidity for all market participants does not impose a burden on competition, but rather that the proposed rule change will continue to promote competition on the Exchange. All market participants will be assessed the same fee to remove SPY Simple Orders.

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.<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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2014-06 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-2014-06. 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 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-2014-06, and should be submitted on or before March 4, 2014.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71487; File No. SR-NYSEMKT-2014-15]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 13—Equities To Modify the Manner by Which MPL-ALO Orders Trade When Triggered by Arriving Interest

February 5, 2014.

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 January 31, 2014, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "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 amend Rule 13—Equities to modify the manner by which MPL-ALO Orders trade when triggered by arriving interest. The text of 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.

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

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

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

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

#### 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 is proposing to amend Rule 13—Equities ("Rule 13") to modify the manner by which MPL-ALO Orders trade when triggered by arriving interest.

The Exchange recently amended Rule 13 to add a new Midpoint Passive Liquidity Order ("MPL Order"), which is an undisplayed limit order that would automatically execute at the mid-point of the protected best bid ("PBB") and the protected best offer ("PBO"). An MPL Order could interact with any incoming order, including another MPL Order, and could execute at prices out to four decimal places.<sup>4</sup>

Pursuant to paragraph (e) of Rule 13 governing MPL Orders, users may designate an MPL Order with an add-liquidity-only ("ALO") modifier ("MPL-ALO Order"). An MPL-ALO Order would not execute on arrival, even if marketable, but would remain non-displayed in the book until triggered to trade by arriving contra-side marketable interest. For example, if there is a buy MPL Order "A" for 100 shares resting on the book when a sell MPL-ALO Order "B" for 100 shares arrives, even though B is marketable against A, both A and B remain undisplayed in the book until B is triggered to trade.<sup>5</sup>

The rule currently provides that an MPL-ALO Order would only be eligible to trade against incoming contra-side interest and would not interact with contra-side interest resting on the book.

<sup>4</sup> See Securities Exchange Act Release No. 71329 (Jan. 16, 2014), 79 FR 3904 (Jan. 23, 2014) (SR-NYSEMKT-2013-84) (Order approving the MPL Order).

<sup>5</sup> The Exchange notes that this example would work the same if A were undisplayed non-MPL reserve interest eligible to trade at the same price as B.

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