

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 will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-NYSEMKT-2014-96 and should be submitted on or before December 15, 2014.

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. 34-73629; File No. SR-Phlx-2014-75]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Pricing Schedule

November 18, 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 November 14, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend its Pricing Schedule to conform certain terminology to Rule 507, Application for Approval as an SQT, RSQT, RSQTO and Assignment in Options" as it relates to Remote Market Makers or "RMMs." The Exchange also proposes to make other clarifying and corrective amendments to various sections of the Pricing Schedule.

The text of the proposed rule change is set forth below. Proposed new language is italicized; deleted text is in brackets.

#### NASDAQ OMX PHLX LLC<sup>1</sup> PRICING SCHEDULE

ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ OMX PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. AS OF JANUARY 3, 2011, THE EXCHANGE WILL CALCULATE FEES ON A TRADE DATE BASIS.

<sup>1</sup> PHLX® is a registered trademark of The NASDAQ OMX Group, Inc.

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#### PREFACE

For purposes of assessing fees, the following references should serve as guidance.

The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).<sup>2</sup>

The term "Specialist" applies to transactions for the account of a Specialist<sup>3</sup> (as defined in Exchange Rule 1020(a)).

The term "ROT, SQT and RSQT" applies to transactions for the accounts of Registered Option Traders<sup>4</sup> ("ROT's"), Streaming Quote Traders ("SQT's"),<sup>5</sup> and Remote Streaming Quote Traders ("RSQT's").<sup>6</sup> For purposes of the Pricing Schedule, the term "Market Maker" will be utilized to describe fees and rebates applicable to ROT's, SQT's and RSQT's.

RSQT's may also be referred to as Remote Market Makers ("RMMs").

The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

The term "Professional" applies to transactions for the accounts of Professionals (as defined in Exchange Rule 1000(b)(14)).

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

The term "Joint Back Office" or "JBO"<sup>7</sup> applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer. [as of September 1, 2014.]

The term "Common Ownership" shall mean members or member organizations under 75% common ownership or control.

For purposes of determining average daily volume or volume-based pricing hereunder, any day that the market is not open for the entire trading day will be excluded from such calculation.

<sup>2</sup> Rule 1000(b)(14) provides in relevant part: "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).

<sup>3</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is [a] defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

<sup>4</sup> A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes SQTs and RSQTs as well as on and off-floor ROTs.

<sup>5</sup> A Streaming Quote Trader is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

<sup>6</sup> A Remote Streaming Quote Trader is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or "RSQTO," which may also be referred to as a Remote Market Making Organization ("RMO"), is a member organization in good

<sup>20</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.

standing that satisfies the RSQTO readiness requirements in Rule 507(a).

<sup>7</sup> A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer (“JBO Broker”) subject to the requirements of Regulation T Section

220.7 of the Federal Reserve System as further discussed at Exchange Rule 703.

\* \* \* \* \*

*A. Mini Options Fees*

*The following fees will apply to Mini Options as specified in Rule 1012, Commentary .13.*

[Mini Options symbols are AAPL7, AMZN7, GLD7, GOLG7, SPY7]

	Customer	Professional	Specialist and market maker	Broker-dealer	Firm
Mini Options Transaction Fee—Electronic Adding Liquidity	\$0.00	\$0.03	\$0.02	\$0.03	\$0.03
Mini Options Transaction Fee—Electronic Removing Liquidity .....	0.00	0.09	0.04	0.09	0.09
Mini Options Transaction Fee—Floor and QCC .....	0.00	0.09	0.09	0.09	0.09

For executions that occur as part of PIXL, the following fees and rebates will apply:

- Initiating Order: \$0.015 per contract
- PIXL Order (Contra-party to the Initiating Order): Customer is \$0.00 and all others will be assessed a transaction fee of \$0.03 per contract.
- PIXL Order (Contra-party to other than the Initiating Order): Customer will be assessed a transaction fee of \$0.00 and all others will be assessed a transaction fee of \$0.03 per contract. The contra-party will be assessed a transaction fee of \$0.03 per contract.

Payment for Order Flow fees will be as follows:

- Penny Pilot Options: \$0.02

- All Other Options: \$0.06

QCC Transaction Fees and rebates defined in Section II do not apply to Mini Options. Routing Fees set forth in Section V apply to Mini Options.

The Monthly Market Maker Cap and the Monthly Firm Fee Cap set forth in Section II as well as other options transaction fee caps, discounts or rebates will not apply to transactions in Mini Options.

Mini Options volume will be included in the calculations for the Customer Rebate Program eligibility but will not be eligible to receive the rebates associated with the Customer Rebate Program.

*B. Customer Rebate Program*

The Customer Rebate Tiers described below will be calculated by totaling Customer volume in Multiply Listed Options (including SPY) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o). Rebates will be paid on Customer Rebate Tiers according to the below categories. Members and member organizations under Common Ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates.

Customer rebate tiers	Percentage thresholds of national customer volume in multiply-listed equity and ETF options classes, excluding SPY options (monthly)	Category	Category
		A	B
Tier 1 .....	0.00%–0.60% .....	\$0.00	\$0.00
Tier 2 .....	Above 0.60%–1.10% .....	*0.10	*0.17
Tier 3 .....	Above 1.10%–1.60% .....	*0.12	*0.17
Tier 4 .....	Above 1.60%–2.50% .....	0.16	0.19
Tier 5 .....	Above 2.50% .....	0.17	0.19

Category A: Rebate will be 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. Rebate will be 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 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order will be paid a rebate of \$0.14 per contract.

Category B: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebate will be 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 4 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 Category B Rebate will not be paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order.

\* The Exchange will pay a \$0.02 per contract rebate in addition to the applicable Tier 2 and 3 rebate to a Specialist or Market Maker or its member or member organization affiliate under Common Ownership provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in Section II.

\* \* \* \* \*

VI. MEMBERSHIP FEES

\* \* \* \* \*

B. STREAMING QUOTE TRADER (“SQT”) FEES

Number of Option Class Assignments <sup>22</sup>	SQT Fees
Tier 1: Up to 200 classes .....	\$0.00 per calendar month.
Tier 2: Up to 400 classes .....	\$2,200 per calendar month.
Tier 3: Up to 600 classes .....	\$3200.00 per calendar month.
Tier 4: Up to 800 classes .....	\$4200.00 per calendar month.
Tier 5: Up to 1000 classes .....	\$5200.00 per calendar month.

B. STREAMING QUOTE TRADER (“SQT”) FEES—Continued

Number of Option Class Assignments <sup>22</sup>	SQT Fees
Tier 6: Up to 1200 classes .....	\$6200.00 per calendar month.
Tier 7: All equity issues .....	\$7,200 per calendar month.

<sup>22</sup> In calculating the number of option class assignments, equity options including ETFs and ETNs will be counted. Currencies and indexes will not be counted in the number of option class assignments.

C. [REMOTE STREAMING QUOTE TRADER ORGANIZATION (“RSQTO”) FEE] *Remote Market Maker Organization (RMO) Fee*

Number of Option Class Assignments <sup>23</sup>	[RSQTO]RMO Fee
Tier 1: less than 100 classes .....	\$5,000 per month.
Tier 2: More than 100 classes and less than 999 classes .....	8,000 per month.
Tier 3: 1000 or more classes .....	11,000 per month.
Remote Specialist Fee <sup>24</sup> .....	200 per option allocation per month.

<sup>23</sup> In calculating the number of option class assignments, equity options including ETFs and ETNs will be counted. Currencies and indexes will not be counted in the number of option class assignments.

<sup>24</sup> The Remote Specialist Fee will be capped at \$4,500 per month.

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**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 various sections of the Pricing Schedule, which applies to options, to add rule text to clarify the Pricing Schedule. Each change will be discussed in more detail below.

Preface—Joint Back Office (“JBO”)

The Exchange notes in the Preface to the Pricing Schedule that a JBO will be priced the same as a Broker-Dealer. [sic] as of September 1, 2014. The Exchange believes that the date is no longer necessary and proposes to remove this reference.

Preface—RMM Amendment

The Exchange proposes to add a sentence to the term “ROT, SQT and RSQT” to state that “RSQTs may also be referred to as Remote Market Makers

(“RMMs”).” The Exchange already includes this statement in note 6 of the Preface. The Exchange proposes to add this in the definition of the term for ease of reference.

Chapter VI—RMO Amendment

The Exchange also proposes to utilize this term to describe the fees at Chapter VI, Membership Fees, Section C, currently titled “Remote Streaming Quote Trader Organization Fee.” The Exchange believes that titling this fee as “Remote Market Maker Organization (RMO) Fee” more specifically defines the fee. The Exchange also proposes to add the term “RMO” in place of “RSQTO” throughout Section C fee table for consistency.

Chapter VI—Adding Tier Numbers

The Exchange proposes to amend Chapter VI, Section B, Streaming Quote Trader (“SQT”) Fees and Section C to assign tier numbers before each tier in each of those fees for ease of reference in referring to the fees.

The Exchange believes that each of the aforementioned amendments will make the Pricing Schedule easier to understand and reference.

Section A—Mini Options Symbols

The Exchange is also proposing to delete the Mini Options symbols listed in Section A, Mini Options Fees and instead note that the pricing applies to all Mini Options as specified in Rule 1012, Commentary .13. The Exchange believes this will assist the Exchange in maintaining a current, accurate Pricing Schedule.

Section B—Customer Rebate Program

The Exchange is proposing to clarify rule text in Section B, Customer Rebate

Program, related to Category B rebates. Currently the Category B rebate is paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. The rebate will be 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 4 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 Category B Rebate will not be paid when an electronically-delivered Customer Complex Order executes against another electronically-delivered Customer Complex Order. The Exchange proposes to amend the last sentence to state, “The Category B Rebate will not be paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order.” The Exchange believes that this sentence helps further clarify the manner in which the Category B rebate is applied today.

The Exchange is also making other clarifying amendments in the definitions to correct typographical errors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>3</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>4</sup>

<sup>3</sup> 15 U.S.C. 78f(b).

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

in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, in that the amendments will provide greater clarity to the Pricing Schedule.

The Exchange believes that removing the historical reference date to the JBO definition in the Preface will provide greater clarity to the Pricing Schedule.

The Exchange believes that the amendments provide greater specificity and conforms word usage with the Rulebook with respect to the usage of the terms RMM and RMO. Also, by adding tier numbers, it will be easier to reference the various streaming fees.

The Exchange believes that generally referring to Mini Options as specified in the Rulebook will assist the Exchange in maintaining a current list of Mini Options which are subject to Section A pricing. The NASDAQ Options Market LLC pricing for Mini Options does not specifically reference the Mini Options symbols.<sup>5</sup>

The Exchange believes that further clarifying the manner in which a Category B Customer Rebate is paid by stating that a Customer Complex PIXL Order is excluded in the same manner as other Customer Complex Orders adds further clarity to the rule text. The Exchange excludes Customer Complex PIXL Orders today from the Category B rebate. The Exchange will not change the manner in which the Exchange pays a rebate as a result of this filing. Customer Complex PIXL Orders will continue to be excluded.

#### *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 is merely seeking to add greater clarity to the Pricing Schedule by conforming the RMM and RMO language to the current usage in Rule 507 of the Rulebook. The Exchange also believes that the addition of tiers provides greater clarity and transparency to the Pricing Schedule which benefits all market participants. Generally citing to all Mini Options provides greater accuracy to the Pricing Schedule. Specifically stating that Customer Complex PIXL Orders are excluded in a manner similar to Customer Complex Orders adds more specificity to the manner in which the

Exchange pays the Category B Customer Rebate. Finally, correcting typographical errors and removing historical dates avoid confusion.

#### *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**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>7</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.

### **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-2014-75 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2014-75. 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-2014-75 and should be submitted on or before December 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2014-27710 Filed 11-21-14; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-73630; File No. SR-NASDAQ-2014-038]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2 Thereto, Relating to the Listing and Trading of the Shares of the Reality Shares NASDAQ-100 DIVS Index ETF Under Nasdaq Rule 5705**

November 18, 2014.

#### **I. Introduction**

On April 10, 2014, The NASDAQ Stock Market LLC ("Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and

<sup>6</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

<sup>5</sup> See Chapter XV, Section 2(4).