

Fund to impose Distribution Fees and/or Service Fees. Applicants have agreed to comply with rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies.

#### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c-10, 12b-1, 17d-3, 18f-3 and 22d-1 under the Act, as amended from time to time or replaced, as if those rules applied to closed-end management investment companies, and will comply with the NASD Conduct Rule 2830, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75704; File No. SR-NYSEArca-2015-71]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule

August 14, 2015.

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 August 6, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule ("Fee Schedule"). The Exchange proposes to implement the fee change effective

August 6, 2015. 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.

#### 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 purpose of this filing is to modify the rates that Lead Market Makers and Market Makers are charged for Manual Executions, and to establish tiers for the Firm and Broker Dealer Monthly Firm Cap. The Exchange proposes to implement fee changes effective on August 6, 2015.

First, the Exchange is proposing to increase the rates that Lead Market Makers and Market Makers are charged for Manual Executions. Currently, Lead Market Makers are assessed a fee of \$0.09 per contract, and Market Makers a fee of \$0.16 per contract, for Manual Executions. The Exchange proposes to raise each fee \$0.09 per contract, to \$0.18 for Lead Market Makers, and \$0.25 for Market Makers. With this proposed change, the fee for Market Makers would be the same as the fee charged to Firm and Broker Dealer executions. The Lead Market Maker rate would be increased by the same amount, while maintaining a lower rate for Lead Market Makers because Lead Market Makers pay a monthly Rights Fee and have greater quoting obligations.

Second, the Exchange is proposing to establish tiers for the Firm and Broker Dealer Monthly Firm Cap that are tied to Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues<sup>4</sup> ("Customer and

Professional Customer Posting Tiers"). At present, the Exchange places a limit, or cap, of \$100,000 per month on combined Firm Proprietary Fees and Broker Dealer Fees, for transactions clearing in the customer range, if executed in open outcry (Manual Transactions), including fees for QCC transactions executed by a Floor Broker. The Firm Cap excludes Strategy Executions, Royalty Fees, and firm trades executed via a Joint Back Office agreement, and Mini option contracts.

The Exchange proposes to introduce tiered caps, with \$100,000 being the maximum Monthly Firm Cap, which would decrease based on the Firm or Broker Dealer achieving Tier 2 or higher on the Customer and Professional Customer Posting Tiers ("Tiered Firm Caps"). Specifically, the higher Customer and Professional Customer Monthly Posting Credit Tier that a Firm or Broker Dealer achieves, the lower the Tiered Firm Cap, with the Cap getting progressively lower upon achieving higher tiers.

The proposed Tiered Firm Caps and the corresponding Customer and Professional Customer Monthly Posting Credit Tiers are set forth in the table below:

#### FIRM AND BROKER DEALER MONTHLY FIRM CAP TIERS

Customer and professional customer monthly posting credit tier achieved	Firm cap
Base or Tier 1 .....	\$100,000
Tier 2 .....	85,000
Tier 3 .....	80,000
Tier 4 .....	75,000
Tier 5 .....	70,000
Tier 6 .....	65,000

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>6</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that increasing the fees for Lead Market Maker and Market Maker Manual executions is

Tiers and Qualifications for Executions in Penny Pilot Issues (setting forth the monthly volume requirements and credits applied for each tier achieved).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

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

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

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

<sup>4</sup> See Fee Schedule, NYSE Arca Options: Trade-Related Charges for Standard Options, Customer and Professional Customer Monthly Posting Credit

reasonable and not unfairly discriminatory as it brings Market Maker fees in line with the fees paid by Firms and Broker Dealers that engage in trading activity similar to Market Makers. The Exchange also notes that the proposed rate for Market Makers is still lower than the rate charged by competing options exchanges.<sup>7</sup> The Exchange also notes that other competing options exchanges likewise similarly charge Market Makers the same transaction fees for manual transactions as Broker Dealers and Firms.<sup>8</sup> The Exchange also notes that Market Makers have alternative avenues to reduce transaction fees not available to Firms and Broker Dealers.<sup>9</sup> The Exchange also believes that is not unfairly discriminatory to assess a lower rate for Lead Market Makers because Lead Market Makers pay Rights Fees and have more burdensome quoting obligations.

The Exchange also believes that the proposal to institute Tiered Firm Caps is reasonable equitable, and not unfairly discriminatory, as the Tiered Firm Caps would not be meaningful to Customers or Professional Customers that are not charged any transaction charges [sic] Manual Executions. The proposed Tiered Firm Caps are also reasonable, equitable and not unfairly discriminatory towards Market Makers, as Market Makers have alternative avenues to reduce transaction fees not available to Firms and Broker Dealers.<sup>10</sup> In addition, the Exchange believes that linking the Tiered Firm Caps to the Customer and Professional Customer Posting Credit Tiers would benefit all market participants because it renders the Caps more achievable, which, in turn encourages additional open outcry order flow, with which Market Makers may interact, once fees are capped. Further, the proposed change likewise encourages Firms and Broker Dealers to achieve higher monthly Customer and Professional Customer Posting Tiers, which increases liquidity and provides greater opportunities for all market participants to interact with electronic order flow. This additional volume and

liquidity would benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery and price improvement.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,<sup>11</sup> the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would continue to encourage competition, including by attracting a wider variety of business to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

#### *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>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</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 such 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 under Section 19(b)(2)(B)<sup>14</sup> of the Act to determine whether the proposed rule change 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-2015-71 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2015-71. 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 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-

<sup>7</sup> See, e.g., NASDAQ OMX PHLX, available here, <http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing> (charging market makers \$0.30 per contract for manual executions).

<sup>8</sup> See, e.g., NYSE Amex Options, available here, [https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE\\_Amex\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf) (charging both non-Amex options market makers and broker deals alike \$0.25 per contract for manual executions).

<sup>9</sup> See Fee Schedule (various credits available to Market Makers for posted monthly volume, including for executions in Penny Pilot Issues and SPY and Market Maker Incentive).

<sup>10</sup> See *id.*

<sup>11</sup> 15 U.S.C. 78f(b)(8).

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

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

NYSEArca-2015-71, and should be submitted on or before September 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75702; File No. SR-Phlx-2015-68]

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

August 14, 2015.

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 August 3, 2015, 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 pricing in section B, entitled “Customer Rebate Program,”<sup>3</sup> of the Pricing Schedule. In particular, the Exchange proposes to: (i) Indicate that Category A rebates for certain Customer Simple Orders in Penny Pilot<sup>4</sup> and non-Penny

Pilot Options will increase specifically for Tiers 3, 4, and 5; (ii) establish new Category B for rebates for certain electronic Customer PIXL<sup>SM</sup> 5 Orders; (iii) rename Category B to Category C regarding certain electronic Complex<sup>6</sup> and Complex PIXL<sup>7</sup> Orders; and (iv) update and clarify the explanatory notes applicable to Categories A, B, and C to match the proposed changes.

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 purpose of this filing is to amend pricing in section B, entitled “Customer Rebate Program,” of the Pricing Schedule. In particular, the Exchange proposes to: (i) Indicate that Category A

at <http://www.nasdaqtrader.com/Micro.aspx?id=phlx>.

<sup>5</sup> PIXL is the Exchange’s price improvement mechanism known as Price Improvement XL or PIXL. See Rule 1080(n).

<sup>6</sup> A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or Exchange Traded Fund (“ETF”) coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .07(a)(i).

<sup>7</sup> A transaction resulting from an order that was electronically delivered utilizes Phlx XL. See Exchange Rules 1014 and 1080. Electronically delivered orders do not include orders transacted on the Exchange floor. A transaction resulting from an order that is non-electronically-delivered is represented on the trading floor by a floor broker. See Exchange Rule 1063. All orders are either electronically or non-electronically delivered.

rebates for certain Customer Simple Orders in Penny Pilot and non-Penny Pilot Options will increase specifically for Tiers 3, 4, and 5; (ii) establish new Category B for rebates for certain electronic Customer PIXL Orders; (iii) rename Category B to Category C regarding certain electronic Complex and Complex PIXL Orders; and (iv) update and clarify the explanatory notes applicable to Categories A, B, and C to match the proposed changes. The Exchange proposes these amendments in order to more clearly delineate how rebates apply to different types of Customer orders: Customer Simple Orders (Category A), Customer PIXL Orders (Category B), and Customer Complex Orders and Customer Complex PIXL Orders (Category C).

#### Section B—Customer Rebate Program

Currently, the Exchange has a Customer Rebate Program consisting of five Tiers of Customer Rebates on two categories, A and B, of transactions. A Phlx member qualifies for a certain rebate Tier based on the percentage of total national customer volume in Multiply Listed equity and ETF options classes, excluding SPY<sup>8</sup> options that it transacts monthly on Phlx. The Exchange calculates Customer volume in Multiply Listed Options (including SPY options) by totaling electronically-delivered and executed volume, excluding volume associated with electronic Qualified Contingent Cross (“QCC”) Orders,<sup>9</sup> as defined in Exchange Rule 1080(o).<sup>10</sup>

The Exchange now has rebate categories Category A and Category B to cover all rebates pursuant to the

<sup>8</sup> SPY is the SPDR® S&P 500® ETF Trust. S&P®, S&P 500®, SPDR®, and Standard & Poor’s® are registered trademarks of Standard & Poor’s® Financial Services LLC.

<sup>9</sup> 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).

<sup>10</sup> 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. See Preface to Pricing Schedule.

<sup>15</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>3</sup> 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 broker or dealer or for the account of a “Professional” (as that term is defined in Rule 1000(b)(14)).

<sup>4</sup> The Penny Pilot was established in January 2007 and was last extended in 2015. See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74) (notice of filing and approval order establishing Penny Pilot); and 75286 (June 24, 2015) (SR-Phlx-2015-54) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016). Non-Penny Pilot Options are options other than Penny Pilot Options listed on the Exchange (e.g. AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF), which can be found