SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations: NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend PIXL pricing

February 17, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b–4 thereunder, notice is hereby given that on February 8, 2017, NASDAQ 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 the Exchange’s Pricing Schedule at Section I, entitled “Rebates and Fees for Adding and Removing Liquidity in SPY,” and Section IV, Part A entitled “PIXL Pricing” to amend pricing related to PIXL executions.

The text of the proposed rule change is available on the Exchange’s Web site at http://nasdaqphlx.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 Exchange’s Pricing Schedule at Section I, entitled “Rebates and Fees for Adding and Removing Liquidity in SPY,” to amend PIXL Executions in Standard and Poor’s Depositary Receipts/SPDRs ("SPY").

The Exchange also proposes to amend PIXL Pricing in Section IV, Part A, entitled “PIXL Pricing” for all other Multiply-Listed options symbols.

Proposed Amendments to Section I: Rebates and Fees for Adding and Removing Liquidity in SPY

Section I of the Pricing Schedule contains pricing for PIXL Executions in SPY. Today, with respect to PIXL executions in SPY, the Exchange assesses an Initiating Order fee of $0.05 per contract. Today, the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order, which are currently reduced to $0.00 if the Customer PIXL Order is greater than 399 contracts. The Exchange is replacing the incentive which reduces the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order, provided the

10 The term “Market Maker” includes Registered Options Traders (“ROT”). See Exchange Rule 1014(b)(i) and (ii). A ROT includes a Streaming Quote Trader or “SQT,” a Remote Streaming Quote Trader or “RSQT” and a Non-SQT, which by definition is neither a SQT nor a RSQT. A ROT is defined in Exchange Rule 1014(b)(ii)(A) 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. An SQT 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. An RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member affiliated with an RSQT, or with a physical trading floor presence who has received permission from the Exchange to trade in options electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or “RSQT,” which may also be referred to as a Remote Market Making Organization (“RMO”), is a member organization in good standing that satisfies the RSQT organizational requirements in Rule 507(a). RSQTs may also be referred to as Remote Market Markers (“RMMs”).

11 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 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)).
Customer PIXL Order is greater than 399 contracts, with another incentive to attract more liquidity for SPY PIXL Orders.

The Exchange proposes to offer Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap 13 a rebate of $0.10 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month. The Exchange desires to incentivize members or member organizations to transact a greater number of SPY Complex PIXL Orders while also incentivizing members or member organizations to submit Customer order flow on Phlx.

The Exchange also proposes to amend its SPY PIXL pricing so that when the PIXL Order is contra to other than the Initiating Order, the PIXL Order will continue to be assessed $0.00 per contract, unless the order is a Customer, in which case the Customer will receive an increased rebate of $0.40 per contract (an increase from $0.38 per contract). The Exchange also proposes to amend the SPY PIXL pricing so that all other Non-Customer contra parties to the PIXL Order, other than the Initiating Order, will be assessed an increased Fee for Removing Liquidity of $0.50 per contract (an increase from $0.42 per contract) or will receive the Rebate for Adding Liquidity.14 The Exchange is increasing the Fee for Removing Liquidity because it seeks to offer an increase rebate to attract additional SPY PIXL Orders.

The Exchange proposes that when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order will not be eligible for a rebate. The Exchange believes that this proposal will encourage Specialists and Market Makers to quote their best price at the initiation of a PIXL auction to obtain the rebate.

Proposed Amendments to Section IV, Part A: PIXL Pricing

Today, the PIXL pricing in all Multiply-Listed Symbols except SPY is as described below. The Exchange assesses an Initiating Order Fee of $0.07 per contract. If the member or member organization qualifies for the Tier 4 or 5 Customer Rebate in Section B the member or member organization will be assessed $0.05 per contract. Today, if the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month, the member or member organization will be assessed $0.00 per contract for Complex PIXL Orders.

Today, any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier 4 or 5 in Section B, or executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month will receive one of the PIXL Initiating Order discounts as described above. Today, the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts. Instead, the Exchange proposes to offer another incentive to attract more liquidity for Complex PIXL Orders similar to proposed SPY PIXL pricing. The Exchange proposes to offer Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap 16 a rebate of $0.10 per contract for all Complex PIXL Orders (excluding SPY Options) greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of Complex SPY PIXL Orders in a month. The Exchange desires to incentivize members and member organizations to transact a greater number of SPY Complex PIXL Orders while also incentivizing members and member organizations to submit Customer order flow on Phlx to obtain the $0.10 rebate on all Complex PIXL Orders (excluding SPY Options).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,17 in general, and further the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,18 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, and is not designed to permit unfair

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13 Section B of the Pricing Schedule contains Customer Rebate Tiers which are calculated by totaling Customer volume in Multiply-Listed Options (excluding options that are electronically delivered and executed, except volume associated with electronic QCQ Orders, as defined in Exchange Rule 10080(o)]. Rebates are paid on Customer Rebate Tiers in three categories. Members and member organizations under Common Ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Affiliated Entities may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. See Section B of the Pricing Schedule.

14 The Rebates for Adding Liquidity for Simple Orders are in Part A and for Complex Orders in Part B.

15 See note 12 above.

16 See note 13 above.

17 15 U.S.C. 78f(b)(4) and (5).

18 15 U.S.C. 78f(b)(4) and (5).
discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.” 19

Likewise, in NetCoalition v. Securities and Exchange Commission 20 (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach. 21 As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.” 22 Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[t]he U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers.’ . . .” 23 Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Proposed Amendments to Section I: Rebates and Fees for Adding and Removing Liquidity in SPY

The Exchange’s proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer SPY PIXL Order if the Customer SPY PIXL Order is greater than 399 contracts and instead offer Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers 24 2 through 6 or qualify for the Monthly Firm Fee Cap 25 a rebate of $0.10 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month is reasonable. The proposed rebate will incentivize members and member organizations to transact a greater number of SPY Complex PIXL Orders will also incentivizing members and member organizations to submit Customer order flow on Phlx. All members and member organizations are eligible for this rebate which may be obtained by either sending in the requisite amount of Customer order, thereby benefitting all participants with order flow which to interact or benefitting members and member organizations that have $75,000 in transaction fees for the month, which contributed to the Exchange’s revenue. The Exchange desires to incentivize members and member organizations to transact a greater amount of Complex SPY Orders as compared to Simple SPY Orders. The quantity of orders is being increased to receive the rebate, which order flow benefits all participants through order interaction.

The Exchange’s proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer SPY PIXL Order if the Customer SPY PIXL Order is greater than 399 contracts and instead offer Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap a rebate of $0.10 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month is equitable and not unfairly discriminatory. All members and member organizations are eligible for the proposed rebate, provided they met the requisite qualifications. Members and member organizations would be uniformly paid the new rebate. No member or member organization will be assessed an increased Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer SPY PIXL Order if the Customer SPY PIXL Order is greater than 399 contracts.

The Exchange’s proposal to amend its SPY PIXL pricing so that when the PIXL Order is contra to other than the Initiating Order, the PIXL Order will continue to be assessed $0.00 per contract, unless the order is a Customer, in which case the Customer will receive an increased rebate of $0.40 per contract is reasonable. The Exchange is increasing this rebate from $0.38 per contract to incentivize members in member organizations to transact a greater number of SPY PIXL Orders to earn the increased rebate.

The Exchange’s proposal to amend its SPY PIXL pricing so that when the PIXL Order is contra to other than the Initiating Order, the PIXL Order will continue to be assessed $0.00 per contract, unless the order is a Customer, in which case the Customer will receive an increased rebate of $0.40 per contract is equitable and not unfairly discriminatory because the Exchange will uniformly pay this rebate.

The Exchange’s proposal to amend the SPY PIXL pricing so that all other Non-Customer contra parties to the PIXL Order, other than the Initiating Order, will be assessed an increased Fee for Removing Liquidity of $0.50 per contract or will receive the Rebate for Adding Liquidity is reasonable. 26 The Exchange is increasing the fee from $0.42 to $0.50 per contract so that it may offer members and member organizations increased SPY Complex PIXL rebates as proposed herein.

The Exchange’s proposal to amend the SPY PIXL pricing so that all other Non-Customer contra parties to the PIXL Order, other than the Initiating Order, will be assessed an increased Fee for Removing Liquidity of $0.50 per contract or will receive the Rebate for Adding Liquidity is equitable and not unfairly discriminatory because the Exchange will uniformly pay the increased Fee for Removing Liquidity to all applicable members and member organizations.

The Exchange’s proposal to no longer offer a rebate when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order is reasonable. The Exchange believes that not paying a rebate to the PIXL Order in this case is reasonable because the Exchange will be paying Specialists and Market Makers the

24 See note 12 above.
25 See note 13 above.
26 The Rebates for Adding Liquidity for Simple Orders are in Part A and for Complex Orders in Part B.
Proposed Amendments to Section IV, Part A: PIXL Pricing

The Exchange’s proposal to no longer offer a rebate when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order is equitable and not unfairly discriminatory. The Exchange will uniformly not offer a rebate to any member or member organization when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction.

Proposed Amendments to Section I: Rebates and Fees for Adding and Removing Liquidity in SPY

The Exchange’s proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts and instead replace this offer with a rebate to attract more liquidity for PIXL Complex PIXL Orders similar to proposed SPY PIXL pricing is equitable and not unfairly discriminatory. All members and member organizations are eligible for the proposed rebate, provide they met the requisite qualifications. Members and member organizations would be uniformly paid the rebate, provided they qualify. No member will be eligible to eliminate the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts.

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. In terms of intra-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

In terms of intra-market competition, the Exchange believes that its proposed rebates and fees continue to remain competitive in SPY and Multiply Listed Options. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.
Order is contra to other than the Initiating Order, the PIXL Order will continue to be assessed $0.00 per contract, unless the order is a Customer, in which case the Customer will receive an increased rebate of $0.40 per contract does not impose an undue burden on intra-market competition because the Exchange will uniformly pay this rebate.

The Exchange’s proposal to amend the SPY PIXL pricing so that all other Non-Customer contra parties to the PIXL Order, other than the Initiating Order, will be assessed an increased Fee for Removing Liquidity of $0.50 per contract or will receive the Rebate for Adding Liquidity does not impose an undue burden on intra-market competition because the Exchange will uniformly assess the increased Fee for Removing Liquidity to all applicable members and member organizations.

The Exchange’s proposal to not offer a rebate when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL Customer PIXL Order does not impose an undue burden on intra-market competition. The Exchange will uniformly not offer a rebate to any member or member organization when the PIXL Order is contra to a Specialist or Market Maker quote, which was established at the initiation of a PIXL auction.

Proposed Amendments to Section IV, Part A: PIXL Pricing

The Exchange’s proposal that if the member or member organization qualifies for the Tier 3, 4 or 5 Customer Rebate in Section B the member or member organization will be assessed $0.05 per contract, instead of the $0.07 per contract Initiating Order fee does not impose an undue burden on intra-market competition because the Exchange will assess the fee in a uniform manner to all applicable members and member organizations.

The Exchange’s proposal to no longer offer the ability to not be assessed an Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer PIXL Order if the Customer PIXL Order is greater than 399 contracts.

SPY Complex Orders similar to the proposed SPY PIXL pricing does not impose a rebate to attract more liquidity for PIXL. 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. If the Commission takes such action, the Commission shall institute proceedings 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);
- Send an email to rule-comments@sec.gov. Please include File Number SR-Phlx–2017–15 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-Phlx–2017–15. 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–2017–15 and should be submitted on or before March 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. Eduardo A. Aleman, Assistant Secretary.

February 17, 2017.