SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66805; File No. SR–Phlx-2012–46]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Equity Option Fees

April 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that, on April 2, 2012, 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 certain Options Transaction Charges in Section II [3] of the Exchange's Pricing Schedule entitled ''Equity Options Fees'' and also offer a rebate on certain Customer orders.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* 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 proposes to amend Section II of the Exchange's Pricing Schedule to: (1) Increase the Professional [4] Options Transaction Charges for both Penny Pilot options [5] and non-Penny Pilot options [6]; and (ii) amend the non-Penny Pilot Broker-Dealer electronic Options Transaction Charge in order to recoup costs associated with supporting a larger number of options classes, option series and overall transaction volume each of which has become larger in the past few years.[7] The Exchange also believes that increasing the Broker-Dealer electronic Options Transaction Charge in non-Penny Pilot options will allow the Exchange to compete more effectively by subsidizing Customer rebates. In addition, the Exchange proposes to offer an additional rebate on certain Customer orders to attract additional Customer order flow.

Specifically, the Exchange proposes to increase the Professional Options Transaction Charges for both Penny Pilot options and non-Penny Pilot options from $.20 per contract to $.25 per contract. The Exchange also proposes increasing the Broker-Dealer Options Transaction Charge in non-Penny Pilot options from $.50 per contract to $.60 per contract.

The Exchange also proposes to amend Section II of the Pricing Schedule to further incentivize members to transact Customer orders by offering an increased rebate of $0.03 per contract on all electronically-delivered Customer orders that: (i) Qualified for the current $0.07 Customer rebate; [8] and (ii) added liquidity in a non-Penny Pilot option. The Exchange also proposes to modify the current language in the Pricing Schedule pertaining to the $0.07 Customer order rebate to make clear that the additional $0.03 Customer rebate must first qualify for the $0.07 rebate to be eligible for the additional rebate. The Exchange also proposes to amend certain existing text related to the current $0.07 per contract rebate to further clarify the text.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(4) of the Act [10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange's proposal to increase the Professional Options Transaction Charges in both Penny Pilot and non-Penny Pilot options as well as increase the non-Penny Pilot Broker-Dealer electronic Options Transaction Charge is reasonable because of the greater costs incurred by the Exchange associated with supporting a larger number of options classes, option series and overall transaction volume. The Exchange believes increasing the Professional Options Transaction Charges in both Penny Pilot and non-Penny Pilot options from $.20 per contract to $.25 per contract is reasonable because the $.05 per contract increase would allow the Exchange to recoup the aforementioned costs while also continuing to assess a Professional a rate that is equal to or lower than a Broker-Dealer and Firm. Also, the increased Professional fees are comparable with fees at other options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4 .

[3] Section II of the Pricing Schedule includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are Multiply Listed.

[4] 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).

[5] The Penny Pilot was established in January 2007; and in October 2009, it was expanded and extended through June 30, 2012. *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); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR–Phlx–2009–91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR–Phlx–2009–94) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR–Phlx–2010–12) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62028 (May 4, 2010), 75 FR 25890 (May 10, 2010) (SR–Phlx–2010–65) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62616 (July 30, 2010), 75 FR 47664 (August 6, 2010) (SR–Phlx–2010–103) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 63395 (November 30, 2010), 75 FR 76062 (December 7, 2010) (SR–Phlx–2010–167) (notice of filing and immediate effectiveness extending the Penny Pilot); and 65976 (December 15, 2011), 76 FR 79247 (December 21, 2011) (SR–Phlx–2011–172) (notice of filing and immediate effectiveness extending the Penny Pilot). *See also* Exchange Rule 1034.

[6] Non-Penny Pilot refers to options classes not in the Penny Pilot.

[7] The costs are associated with network infrastructure, database and latency enhancements and regulatory systems.

[8] Currently, the Exchange pays a rebate of $0.07 per contract to members that execute an electronically-delivered Customer order and transact an average daily volume of 50,000 Customer contracts or greater in a given month.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

exchanges.[11] The Exchange believes increasing the Broker-Dealer electronic non-Penny Options Transactions Charge from $.50 per contract to $.60 per contract is reasonable because the $.10 per contract increase would allow the Exchange to recoup the aforementioned costs while also subsidizing increased rebates for certain electronically-delivered Customer orders. An increased Broker-Dealer electronic non-Penny Pilot Options Transaction Charge allows the Exchange to compete more effectively by subsidizing rebates offered on electronically-delivered Customer orders, such as the rebate proposed herein.

The Exchange's proposal to increase the Professional Options Transaction Charges in both Penny Pilot and non-Penny Pilot options is equitable and not unfairly discriminatory because Professionals would continue to be assessed the same or lower fees as compared to Broker-Dealers [12] and Firms.[13] Market Makers [14] would be assessed the same or lower fees as compared to Professionals,[15] because Market Makers have burdensome quoting obligations [16] to the market which do not apply to Professionals, Customers, Firms and Broker-Dealers. Customers are not assessed Options Transactions Charges in either Penny Pilot or non-Penny Pilot options because Customer order flow brings liquidity to the market, which in turn benefits all market participants. Broker-Dealers and Firms today pay higher fees as compared to a Professional. The increased Professional Options Transaction Charges in both Penny Pilot and non-Penny Pilot options would in some cases equalize the fees paid by Professionals, Broker-Dealer and Firms [17] and make them uniform and in other cases the Broker-Dealer and Firms would continue to pay higher fees as is the case today.[18]

The Exchange's proposal to increase the non-Penny Pilot Broker Dealer electronic Options Transaction Charge is equitable and not unfairly discriminatory because, currently, Broker-Dealers are assessed higher fees as compared to Customers, Professionals, Market Makers and Firms. Customers are not assessed Options Transaction Charges because Customer order flow brings liquidity to the market, which, in turn, benefits all market participants. Market Makers are assessed lower Options Transaction Charges as compared to other market participants, except Customers, because they have burdensome quoting obligations [19] to the market which do not apply to Customers, Professionals, Firms and Broker-Dealers. In addition, Market Makers are subject to Payment for Order Flow Fees [20] whereas Professionals, Firms and Broker-Dealers are not subject to such fees.[21] For example, a Market Maker electronically transacting a Penny Pilot option contra a Customer order would pay $.47 per contract and a Market Maker electronically transacting a non-Penny Pilot option contra a Customer order would pay $.92 [sic] per contract.[22] With respect to Professionals, they have access to more information and technological advantages as compared to Customers and Professionals do not bear the obligations of Market Makers. Also, Professionals engage in trading activity similar to that conducted by Market Makers. For example, Professionals continue to join bids and offers on the Exchange and thus compete for incoming order flow. For these reasons, the Exchange believes that Professionals may be priced higher than a Customer and may be priced equal to or higher than a Market Maker. Professionals are currently assessed a $.20 per contract Options Transaction Charge in non-Penny Pilot options, which the Exchange is proposing to increase to $.25 per contract, as compared to a Broker-Dealer that is currently assessed an electronic Options Transaction Charge of $.50 per contract for non-Penny Pilot options.[23] The Exchange believes that increasing the Broker-Dealer electronic non-Penny Pilot Options Transaction Charge to $.60

[11] *See* SR–CBOE–2012–032, a rule change recently filed by The Chicago Board Options Exchange, Incorporated (''CBOE'') to increase both the voluntary professional and professional transaction fees for equity options and index, ETF, ETN and HOLDRs options, excluding OEX, XEO, SPXW and Volatility Indexes, from $0.20 to $0.25 per contract. *See also* NYSE AMEX LLC's Fee Schedule, which assesses professional customers a $0.25 per contract fee for manual executions and a $0.23 per contract fee for electronic executions.

[12] Broker-Dealers are assessed a Penny Pilot Options Transaction Charge of $.45 per contract for electronic orders and a Penny Pilot Options Transaction Charge of $.25 for non-electronic orders. Broker-Dealers would be assessed a proposed non-Penny Pilot Options Transaction Charge of $.60 for electronic orders and are currently assessed a non-Penny Pilot Options Transaction Charge of $.25 for non-electronic orders.

[13] Firms are assessed a Penny Pilot Options Transaction Charge of $.25 per contract for electronic orders and a Penny Pilot Options Transaction Charge of $.25 for non-electronic orders. Firms are assessed a non-Penny Pilot Options Transaction Charge of $.40 for electronic orders and a non-Penny Pilot Options Transaction Charge of $.25 for non-electronic orders.

[14] A ''Market Maker'' includes Specialists (*see* Rule 1020) and Registered Options Traders (''ROTs'') (Rule 1014(b)(i) and (ii), which includes Streaming Quote Traders (''SQTs'') (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (''RSQTs'') (*see* Rule 1014(b)(ii)(B)). Directed Participants are also Market Makers.

[15] Market Makers are assessed a Penny Pilot Options Transaction Charge of $.22 per contract for electronic orders and a Penny Pilot Options Transaction Charge of $.25 for non-electronic orders. Market Makers are assessed a non-Penny Pilot Options Transaction Charge of $.23 for electronic orders and a non-Penny Pilot Options Transaction Charge of $.25 for non-electronic orders.

[16] *See* Exchange Rule 1014 entitled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[17] By increasing the Professional Options Transaction Charges in both Penny Pilot and non-Penny Pilot options to $.25 per contract would cause the rates assessed Professionals to be uniform to the rates assessed Broker-Dealers for non-electronic transactions in Penny Pilot options and non-electronic transactions in non-Penny Pilot options as well as rates assessed Firms for electronic and non-electronic transactions in Penny Pilot options and non-electronic transactions in non-Penny Pilot options.

[18] By increasing the Professional Options Transaction Charges in both Penny Pilot and non-Penny Pilot options to $.25 per contract would cause the rates assessed Professionals to be lower than the rates assessed Broker-Dealers for electronic transactions in Penny Pilot options and electronic transactions in non-Penny Pilot options (assuming the proposed new rate of $.60 per contract) and the rate assessed Firms for electronic transactions in non-Penny Pilot options.

[19] *See* note 16.

[20] Payment for Order Flow Fees are $.25 per contract for options that are trading in the Penny Pilot Program and $.70 per contract for other equity options. *See* Section II of the Pricing Schedule.

[21] Payment for Order Flow Fees are assessed on transactions resulting from Customer orders and are available to be disbursed by the Exchange according to the instructions of the Specialist units/Specialists or Directed ROTs to order flow providers who are members or member organizations, who submit, as agent, customer orders to the Exchange or non-members or non-member organizations who submit, as agent, Customer orders to the Exchange through a member or member organization who is acting as agent for those Customer orders. Specialists and Directed ROTs who participate in the Exchange's payment for order flow program are assessed a Payment for Order Flow Fee, in addition to ROTs. Therefore, the Payment for Order Flow Fee is assessed, in effect, on equity option transactions between a Customer and an ROT, a Customer and a Directed ROT, or a Customer and a Specialist. A ROT 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 a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. *See* Exchange Rule 1014(b)(i) and (ii).

[22] In terms of effective rates, a Market Maker transacting a Penny Pilot option contra a Customer would effectively pay on average $.0586 per contract and a Market Maker transacting a non-Penny Pilot option contra a Customer would effectively pay on average $0.684 per contract. These effective rates apply to the fees contained in Section II of the Pricing Schedule. Section I of the Pricing Schedule entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols'' only applies to the Select Symbols listed in Section I.

[23] Section II of the Pricing Schedule contains electronic vs. non-electronic Options Transaction Charges only for Market Makers, Broker-Dealers and Firms.

per contract for options does not misalign the current rate differentials between a Broker-Dealer and a Professional because the differential is only increasing by $.05 per contract and is comparable to differentials at other options exchanges.[24] Firms are currently assessed different Options Transaction Charges as compared to Broker-Dealers. Firms are assessed an electronic Options Transaction Charge of $.40 per contract in non-Penny Pilot options as compared to the current Broker-Dealer electronic Options Transaction Charge of $.50 per contract in non-Penny Pilot options. The proposed rate differential as between a Firm and Broker-Dealer of $.20 per contract, as proposed herein, is lower than differentials at other options exchanges for such market participants.[25] The proposed rate differential as between a Firm and Broker-Dealer of $.20 per contract in electronic non-Penny Pilot options would be equivalent to the current rate differential between a Firm and Broker-Dealer of $.20 per contract in electronic Penny Pilot options.[26] In addition, the Exchange believes that it is equitable and not unfairly discriminatory to increase the Broker-Dealer electronic non-Penny Pilot Options Transaction Charge to $.60 per contract to subsidize Customer rebates because attracting Customer order flow to the Exchange will benefit all market participants.

The Exchange believes that offering an increased rebate of $0.03 per contract on all Customer orders that qualified for the current $0.07 Customer order rebate and also add liquidity in a non-Penny Pilot option is reasonable because the Exchange is seeking to further incentivize market participants to transact a greater number of Customer orders in non-Penny Pilot options, which order flow should benefit all market participants because of the increased liquidity such orders bring to the market.

The Exchange believes that offering an increased rebate of $0.03 per contract on all Customer orders that qualified for the current $0.07 Customer order rebate and also add liquidity in a non-Penny Pilot option is equitable and not unfairly discriminatory because all market participants are eligible to receive the additional rebate once they meet the volume threshold for Customer Orders. All market participants would be uniformly paid the additional $0.03 per contract rebate on qualifying Customer orders as long as those orders add liquidity in a non-Penny Pilot option. The Exchange believes that requiring members to transact an average daily volume of 50,000 Customer contracts or greater in a given month to obtain the rebate is reasonable, equitable and not unfairly discriminatory because the volume threshold should incentivize members to bring greater liquidity to the Exchange, thereby benefitting all market participants. Similar to current fees on the NASDAQ Options Market LLC (''NOM''), the Exchange is proposing to offer a rebate based on a certain volume criteria.[27] Similar to this proposal, the CBOE offers a volume incentive program. CBOE credits each Trading Permit Holder (''TPH'') a certain per contract amount based on the volume of customer contracts the TPH executes electronically at CBOE in multiply-listed option classes (excluding qualified contingent cross trades).[28] The Exchange's proposal to exclude PIXL and QCC Orders from the rebate and volume threshold calculation is reasonable, equitable and not unfairly discriminatory because PIXL and QCC Orders have the opportunity to receive rebates today,[29] and the Exchange pays the rebate uniformly to its members.

The Exchange operates in a highly competitive market, comprised of nine exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee and rebate levels at a particular venue to be excessive. Accordingly, the fees that are assessed and the rebates paid by the Exchange 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.

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.

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.[30] 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.* Please include File Number SR–Phlx–2012–46 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–2012–46. This file number should be included on the

[24] CBOE currently assesses a professional an equity options fee of $.20 [sic] per contract and a Broker-Dealer electronic order an equity options fee of $.45 per contract. *See* CBOE's Fees Schedule.

[25] CBOE currently assesses a Clearing Trading Permit Holder Proprietary an equity options fee of $.20 per contract and a Broker-Dealer electronic order an equity options fee of $.45 per contract. *See* CBOE's Fees Schedule. Similarly, the International Securities Exchange, LLC (''ISE'') assesses a Firm Proprietary execution fee of $.20 per contract/side and a Non-ISE Market Maker a fee of $.45 per contract side.

[26] Currently, a Firm transacting an electronic Penny Pilot options order pays $.25 per contract while a Broker-Dealer transacting an electronic Penny Pilot options order pays $.45 per contract.

[27] NOM currently has a tiered rebate with certain volume criteria for Customer orders in Penny Pilot Options. *See* Chapter XV, Section 2 entitled ''NASDAQ Options Market—Fees.''

[28] *See* CBOE's Fees Schedule. CBOE offers a per contract credit ranging from $.00 to $.20 per contract based on a certain volume threshold which ranges from 0 to 375,001 plus customer contracts per day.

[29] *See* Sections II and IV(A) of the Exchange's Pricing Schedule. A PIXL Order will receive the rebate for adding liquidity when executed against contra-side order(s) that respond to the PIXL auction broadcast message as well as when executed against contra-side quotes and unrelated orders on the PHLX book that arrived after the PIXL auction was initiated.

[30] 15 U.S.C. 78s(b)(3)(A)(ii).

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 a.m. and 3 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–2012–46 and should be submitted on or before May 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9406 Filed 4–18–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66806; File No. SR–Phlx–2012–49]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1014

April 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4[2] thereunder, notice is hereby given that, on April 4, 2012, 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 Section (b)(ii)(D)(3) of Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders, a rule pertaining to the minimum size requirement for quotations.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* 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

This proposed rule change is based on filings previously submitted by the Chicago Board Options Exchange ("CBOE")[3] and the International Securities Exchange ("ISE")[4] that were effective on filing.

The purpose of the proposed rule change is to amend Section (b)(ii)(D)(3) of Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders, in order to change a minimum quoting size requirement. Rule 1014(b)(ii)(D) sets forth certain market making obligations that apply to Streaming Quote Traders ("SQTs"),[5] Remote Streaming Quote Traders ("RSQTs")[6] and specialists. For example, Rule 1014(b)(ii)(D)(1) provides that, in addition to other obligations and with certain exceptions, an SQT and an RSQT shall be responsible to quote two-sided markets in not less than 60% of the series in which such SQT or RSQT is assigned. Likewise, Rule 1014(b)(ii)(D)(2) provides that a specialist must quote two-sided markets in the lesser of 99% of the series or 100% of the series minus one call-put pair in each option in which such specialist is assigned.

Currently Rule 1014(b)(ii)(D)(3) provides that SQTs, RSQTs and the specialist assigned in an option shall submit electronic quotations for such option with a size of not less than 10 contracts. The Exchange proposes to eliminate the 10 contract minimum size and to provide instead that the minimum number of contracts shall be specified by the Exchange for each option. The proposed change would allow the Exchange to set a minimum quotation size requirement for quotes on a class by class basis, provided the minimum set by the Exchange is at least one contract. Phlx would not impose a minimum quotation size requirement greater than 10 contracts.

The Exchange believes it should have the flexibility to change the minimum size requirement on a class by class basis depending on market conditions and the trading and liquidity in a particular option class and its underlying security. Phlx notes that the minimum quotation size requirement for market makers on ISE, CBOE, NYSE Arca, Inc. ("NYSE Arca") and the Nasdaq Options Market ("NOM") is only one contract.[7] As a result, Phlx believes the proposed rule change is based on and similar to the rules of other options exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

---

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58828 (October 21, 2008), 73 FR 63749 (October 27, 2008) (SR–CBOE–2008–107).

[4] *See* Securities Exchange Act Release No. 60854 (October 21, 2009) 74 FR 55613 (October 28, 2009) (SR–ISE–2009–84).

[5] A Streaming Quote Trader ("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.

[6] A Remote Streaming Quote Trader ("RSQT") is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization 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. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[7] *See* ISE Rule 804, CBOE Rules 6.2B, 8.7, 8.14, 8.15A, NYSEArca Rule 6.37B and NOM Rulebook Chapter VII, Section 6(a).