persons using such service. 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.[10]

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–ICEEU–2013–07 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–ICEEU–2013–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/publicdocs/regulatory_filings/ICEU_SEC_042413.pdf.*

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–ICEEU–2013–07 and should be submitted on or before June 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11407 Filed 5–14–13; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69548; File No. SR–Phlx–2013–49]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Sections of the Exchange's Pricing Schedule

May 9, 2013.

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 May 1, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 with respect to the Customer [3] Rebate Program in Section B, certain pricing in Section II entitled ''Multiply Listed Options Fees,'' [4] including Qualified Contingent Cross (''QCC'') Rebates,[5] and Section IV, entitled ''Other Transaction Fees,'' PIXL [6] Pricing and FLEX Options [7] pricing. The Exchange also proposes to eliminate references to RUT and clarify the treatment of certain strategies.

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.

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

[2] 17 CFR 240.19b–4.

[3] 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)).

[4] The pricing in Section II includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

[5] 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). A Floor QCC Order must: (i) Be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the National Best Bid and Offer (''NBBO''); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. *See* Rule 1064(e). *See also* Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR–Phlx–2011–56).

[6] PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXL℠). *See* Rule 1080(n).

[7] The term ''FLEX option'' means a FLEX option contract that is traded subject to this Rule. Although FLEX options are generally subject to the rules in this section, to the extent that the provisions of this Rule are inconsistent with other applicable Exchange rules, this Rule takes precedence with respect to FLEX options. *See* Exchange Rule 1079.

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 Category A of the Customer Rebate Program to offer increased rebate opportunities for PIXL Orders greater than 999 contracts in Section II symbols. The Exchange proposes to amend Section II to increase the maximum QCC rebate that will be paid by the Exchange, adopt a new fee and rebate for certain floor transactions, clarify the treatment of strategies and eliminate RUT from the Pricing Schedule. Finally, the Exchange proposes to amend its PIXL Pricing and relocate and adopt new FLEX Multiply Listed Options pricing.

Customer Rebate Program

Currently, the Exchange has in place a four tier structure Customer Rebate Program at Section B of the Pricing Schedule which pays Customer rebates on four Categories (A, B, C and D) of transactions. The four tier structure pays rebates based on percentage thresholds of national customer multiply-listed options volume by month based on the same four Categories (A, B, C and D) of transactions. Specifically, the Exchange bases a market participant's qualification for a certain Rebate Tier on the percentage of total national customer volume in multiply-listed options which are transacted monthly on Phlx as follows:

Customer rebate tiers	Percentage thresholds of national customer volume in multiply-listed equity and ETF options classes (Monthly)	Category A	Category B	Category C	Category D
Tier 1	0.00%–0.75%	$0.00	$0.00	$0.00	$0.00
Tier 2	Above 0.75%–1.60%	0.11	0.12	0.13	0.08
Tier 3	Above 1.60%–2.60%	0.13	0.13	0.14	0.08
Tier 4	Above 2.60%	0.15	0.15	0.15	0.09

Today, the Exchange totals Customer volume in Multiply Listed Options (including Select Symbols) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o) in the same manner.[8] Members and member organizations under common ownership [9] may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Category A rebates are 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. Rebates are paid on PIXL Orders in Section II symbols that execute against non-Initiating Order interest. Category B rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II. Category C rebates are paid to members executing electronically-delivered Customer Complex Orders in Select Symbols in Section I. Category D rebates are paid to members executing electronically-delivered Customer Simple Orders in Select Symbols in Section I. Rebates are paid on PIXL Orders in Section I symbols that execute against non-Initiating Order interest.

The Exchange proposes to amend Category A of the Customer Rebate Program to instead pay on PIXL Orders in Section II symbols that execute against non-Initiating Order interest, except in the case of a PIXL Order that is greater than 999 contracts. All PIXL Orders that are greater than 999 contracts will be paid a rebate regardless of the contra party to the transaction. The Exchange is not proposing any additional amendments to the Customer Rebate Program.

Section II Amendments

The Exchange proposes to remove references to FLEX Option pricing in Section II of the Pricing Schedule. The Exchange will adopt new FLEX Option pricing in Section IV of the Pricing Schedule, which will be described in additional detail below.

The Exchange proposes to adopt new pricing for Specialists [10] and Market Makers [11] that are contra to a Customer Penny Pilot Options on Exchange Traded-Fund (''ETFs'') [12] on the Exchange's floor of $0.25 per contract in addition to the Floor Options Transaction Charges in Section II of the Pricing Schedule.[13] Additionally, the contra Customer order to the Specialist and Market Maker transaction will be entitled to a rebate of $0.25 per contract. The Exchange believes that this new pricing will encourage trading in Penny Pilot Options on ETFs on the Exchange's trading floor.

Finally, the Exchange is removing references the reference to options on the Russell 2000® Index (the ''Full Value Russell Index'' or ''RUT'') in Section II of the Pricing Schedule as the Exchange delisted RUT as of April 24, 2013.

Section IV Amendments

PIXL

The Exchange proposes to amend PIXL pricing at Section IV, Part A of the Pricing Schedule. Currently, the Exchange assesses an Initiating Order [14] a $0.07 per contract or $0.05 per contract fee if the Customer Rebate Program Threshold Volume, defined in Section B, is greater than 100,000

[8] For clarity, the Exchange will calculate volume and pay rebates based on a member organization's Phlx house account numbers.

[9] Common ownership means 75% common ownership or control.

[10] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[11] A Market Maker includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

[12] An ETF is an open-ended registered investment company under the Investment Company Act of 1940 that has received certain exemptive relief from the Commission to allow secondary market trading in the ETF shares. ETFs are generally index-based products, in that each ETF holds a portfolio of securities that is intended to provide investment results that, before fees and expenses, generally correspond to the price and yield performance of the underlying benchmark index.

[13] Specialists and Market Makers are assessed a Floor Options Transaction Charge of $0.25 per contract. *See* Section II of the Pricing Schedule.

[14] A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''PIXL Order'') against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent (''Initiating Order'') provided it submits the PIXL order for electronic execution into the PIXL Auction (''Auction'') pursuant to Rule 1080. *See* Exchange Rule 1080(n).

contracts per day in a month.[15] The Exchange proposes to amend the PIXL pricing to state that an Initiating Order fee for a Firm that is contra to a Customer PIXL Order will be reduced to $0.00 if a Customer PIXL Order is greater than 999 contracts. The Exchange believes that this amendment will encourage Firms to transact a greater number of PIXL Orders.

FLEX

The Exchange also proposes to add a new Part B to Section IV entitled ''FLEX Transaction Fees.'' As mentioned herein, FLEX Options pricing is currently located in Section II of the Pricing Schedule. Today, the Exchange assesses Customers no fee for transacting FLEX Options. All other market participants, Professionals,[16] Specialists, Market Makers, Broker-Dealers[17] and Firms,[18] are assessed $0.10 per contract when transacting FLEX Options.[19] Further, today the Firm Floor Options Transaction Charges are waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account (including FLEX and Cabinet Options Transaction Charges).[20]

The Exchange proposes to adopt new FLEX Multiply Listed Options pricing in Section IV, Part B of the Pricing Schedule for Multiply Listed Options. FLEX Transaction Customer Fees for Multiply Listed Orders on the Exchange's trading floor[21] will continue to be assessed no fee for transacting FLEX Options. All other market participants, Professionals, Specialists, Market Makers, Broker-Dealers and Firms, will now be assessed an increased fee of $0.15 per contract when transacting FLEX Options.[22] The Exchange will continue to apply the Monthly Firm Fee Cap,[23] Monthly Market Maker Cap,[24] and the Options Surcharge in PHLX/KBW Bank Index (''BKX''), options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX (''MNX'') and options on the Nasdaq 100 Index traded under the symbol NDX (''NDX'') described in Section II[25] will apply to this Section IV, B. No other fees described in Section II will apply to this Section IV, B. The Exchange will continue to waive FLEX transaction fees for a Firm executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. The pricing in Section III, entitled ''Singly Listed Options'' will continue to apply to FLEX Singly Listed Options, as is the case today.[26] The Exchange assesses Options Transaction Charges for Singly Listed Options as follows: A Customer is assessed $0.35 per contract, a Specialist and Market Maker is assessed $0.40 per contract and a Professional, Firm and Broker-Dealer are assessed $0.60 per contract.

The Exchange also proposes to clarify that FLEX Options are not eligible for strategy treatment. Today, the Exchange caps certain dividend,[27] merger,[28] short stock interest[29] and reversal and conversion[30] floor option transactions. FLEX Options are not eligible for strategy treatment today. There is no mechanism today to mark FLEX Option transactions for strategy caps, therefore today FLEX Options are not eligible for strategy treatment. The Exchange proposes to clarify in the new FLEX Pricing in Section IV, Part B that FLEX Options will not be eligible for strategy treatment.

The Exchange proposes to rename Section IV, Part B, ''Cancellation Fees,'' as Part C and also proposes to rename Section IV, Part C, ''Options Regulatory Fee,'' as Part D.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[31] in general, and furthers the objectives of Section 6(b)(4) of the Act[32] in particular, in that it provides for an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

Customer Rebate Program

The Exchange's proposal to amend Category A of the Customer Rebate Program to pay rebates on PIXL Orders in Section II symbols for orders that are greater than 999 contracts, regardless of the contra party, is reasonable because the Exchange seeks to incentivize market participants by offering additional opportunities to earn Customer rebates on PIXL Orders.

The Exchange's proposal to amend Category A of the Customer Rebate Program to pay rebates on PIXL Orders

[15] Any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier discount in Section B receives the PIXL Initiating Order discount as described above.

[16] 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).

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

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

[19] FLEX Option fees today are not in addition to Options Transaction Charges.

[20] The Firm Floor Options Transaction Charges is waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account.

[21] FLEX options are only executed on the Exchange's trading floor and are not executed electronically on the Exchange.

[22] FLEX Option fees today are not in addition to Options Transaction Charges.

[23] Firms are subject to a maximum fee of $75,000 (''Monthly Firm Fee Cap''). Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in this Section II) are excluded from the Monthly Firm Fee Cap. Reversal and conversion strategy executions (as defined in this Section II) are included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

[24] Specialists and Market Makers are subject to a ''Monthly Market Maker Cap'' of $550,000 for: (i) Electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest and reversal and conversion strategy executions (as defined in this Section II) are excluded from the Monthly Market Maker Cap.

[25] Today, the Exchange pays an Options Surcharge in BKX of $0.10 per contract for all market participants except Customers. Also, the Exchange pays an Options Surcharge in RUT, MNX and NDX of $0.15 per contract for all market participants, except Customers. As noted herein, RUT is delisted.

[26] Section III pricing includes options overlying currencies, equities, ETFs, ETNs treasury securities and indexes not listed on another exchange.

[27] A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend.

[28] A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

[29] A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

[30] Reversal and conversion strategies are transactions that employ calls and puts of the same strike price and the underlying stock. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(4).

in Section II symbols for orders that are greater than 999 contracts, regardless of the contra party,[33] is equitable and not unfairly discriminatory because the Exchange will pay Customer rebates to any market participant that transacts a PIXL Order greater than 999 contracts regardless of the contra party in Section II symbols. This proposal would pay a rebate for a Customer PIXL Order in a Section II symbol for orders greater than 999 contracts regardless of whether the Customer PIXL Order is contra to an Initiating Order or a non-Initiating Order. The Exchange will apply the Category A rebate uniformly with respect to market participants transacting qualifying orders.

Section II Amendments

The Exchange's proposal to adopt new pricing for Specialists and Market Makers that are contra to a Customer Penny Pilot Options on ETFs transacted on the Exchange's floor of $0.25 per contract in addition to the Options Transaction Charges [34] in Section II of the Pricing Schedule is reasonable because the Exchange seeks to encourage more orders in Penny Pilot Options on ETFs to be delivered and executed on the Exchange's trading floor and therefore provides an opportunity for floor participants to interact with that order. Additionally, the proposed fees are in line with pricing at other options exchanges.[35] The Exchange also proposes to assess this fee in order that it may offer a rebate to the Customer on the contra-side of a Specialist and Market Maker floor transaction in a Penny Pilot Option on an ETF. The Exchange believes that paying a rebate of $0.25 per contract to Customers on the contra-side of a Specialist and Market Maker Penny Pilot Options on an ETF order will encourage market participants to send Customer Penny Pilot Options on ETFs to the Exchange's floor for execution to qualify for the rebate when they are contra to a Specialist or Market Maker order.

The Exchange's proposal to adopt new pricing for Specialists and Market Makers that are contra to a Customer Penny Pilot Options on ETFs transacted on the Exchange's trading floor of $0.25 per contract in addition to the Options Transaction Charges [36] in Section II of the Pricing Schedule is equitable and not unfairly discriminatory. Today, Customers do not pay transaction fees for Multiply Listed Penny and Non-Penny Pilot Options, so Specialists and Market Makers will continue to be assessed higher transaction fees. Also, unlike Professionals and Broker-Dealers, the Exchange provides other pricing benefits to Specialists and Market Makers such as a Monthly Market Maker Cap. Also, when comparing Specialists and Market Makers to Firms and other market participants it is important to note that Specialists and Market Makers are assessed Payment for Order Flow fees (''PFOF'') when transacting Customer electronic orders, but not floor transactions. Specialists and Market Makers are assessed a higher fee in order to incentivize order flow, similar to the manner in which the PFOF [37] incentivizes order flow for electronic transactions. Specialists and Market Makers interact with that Customer order flow and benefit from it unlike other market participants.

The Exchange's proposal to pay a $0.25 per contract rebate to a Customer that is contra to a Specialist or Market Maker order in a Penny Pilot Options on an ETF transacted on the Exchange's trading floor is equitable and not unfairly discriminatory because Customer order flow is unique and such order flow attracts liquidity to the market to the benefit of all market participants. The Exchange will uniformly pay all Customers the $0.25 per contract rebate if the order is contra to a Specialist or Market Maker order in Penny Pilot Options on ETFs transacted on the Exchange's trading floor.

The Exchange's proposal to remove references to RUT in Section II of the Pricing Schedule is reasonable, equitable and not unfairly discriminatory because the Exchange delisted RUT as of April 24, 2013 and RUT is no longer traded on Phlx. The pricing is unnecessary.

Section IV Amendments

PIXL

The Exchange's proposal to amend PIXL pricing at Section IV, Part A of the Pricing Schedule to reduce the Initiating Order fee to $0.00 for a Firm that is contra to a Customer PIXL Order that is greater than 999 contracts is reasonable for the reasons stated below. The Exchange is attempting to attract PIXL order flow by incentivizing members. The Exchange believes that this amendment will encourage market participants to transact a greater number of larger sized orders in PIXL. Today, the Exchange incentivizes market participants to transact PIXL Orders by offering competitive pricing including Customer rebates in Section B of the Pricing Schedule. The Exchange is instead offering to reduce the PIXL Initiating Order Fee which is currently $0.07 or $0.05 per contract if Customer Rebate Program Threshold Volume defined in Section B is greater than 100,000 contracts per day in a month to $0.00 for a Firm that is a contra to a Customer PIXL Order which exceeds 999 contracts. The Exchange desires to incentivize Firms to offer Customer PIXL Orders with respect to large orders (greater than 999 contracts) price improvement opportunities via PIXL because Firms typically execute such large institutional orders as compared to other market participants. The proposed PIXL Initiation Order Firm Fee reduction to $0.00 per contract, when contra to a Customer PIXL Order, is similar to the manner in which the Exchange assesses transaction fees for Firm Floor Facilitation orders. Today, the Exchange waives Firm Floor Options Transaction Charges [38] for members executing facilitation orders pursuant to Exchange Rule 1064 [39] when such members are trading in their own proprietary account. The Exchange waives Firm Facilitation Fees because such fees serve to encourage Firms to facilitate Customer order flow. Likewise, the Exchange seeks to similarly assess Firm fees for PIXL orders, which are electronic orders, as compared to floor

[33] Today, a PIXL Order that is contra to a non-Initiating Order interest is entitled to the Customer rebate in Section B of the Pricing Schedule.

[34] Specialists and Market Makers are assessed an Options Transaction Charge of $0.25 per contract for transacting floor trading ETFs in Penny Pilot Options. *See* Section II of the Pricing Schedule. The Exchange does not assess Payment for Order Flow fees for floor transactions. *See* Section II of the Pricing Schedule.

[35] *See* the Chicago Board Options Exchange Incorporated (''CBOE'') Fees Schedule. CBOE assesses CBOE Market Makers transaction fees for floor trading of ETFs in Penny Pilot Options of $0.25 -$0.03 per contracts, depending on the number of contracts executed per month (Liquidity Provider Scale) in addition to a $0.25 per contract payment for order flow fee.

[36] Specialists and Market Makers are assessed an Options Transaction Charge of $0.25 per contract for transacting Floor ETFs in Penny Pilot Options. *See* Section II of the Pricing Schedule. The Exchange does not assess Payment for Order Flow fees for floor transactions. *See* Section II of the Pricing Schedule.

[37] The Exchange assesses a $0.25 per contract PFOF for options that are trading in the Penny Pilot Program and a $0.70 per contract fee for remaining equity options in addition to other transaction fees in Sections I and II of the Pricing Schedule with respect to Customer orders. No payment for order flow fees will be assessed on trades that are not delivered electronically. *See* Section II of the Pricing Schedule.

[38] The Exchange assesses Firm Floor Options Transaction Charges in Penny and Non-Penny Pilot Options of $0.25 per contract.

[39] Exchange Rule 1064, entitled ''Crossing, Facilitation and Solicited Orders,'' provides at Rule 1064(b) that except as provided in paragraph 1064(e), a Floor Broker holding an options order for a public customer and a contra-side order may cross such orders in accordance with Rule 1064(a) or may execute such orders as a facilitation cross as specified in Rule 1064(b)(i)–(iii).

orders, by encouraging Firms to initiate PIXL Orders within the PIXL auction mechanism in an effort to lower execution charges by transacting with a Customer PIXL Order. When a Firm enters an Initiating Order, similar to Firm Facilitation orders on the Exchange floor, market participants are afforded an opportunity to respond to the order which should in turn generate additional responders to a PIXL auction. All market participants are eligible to respond to an Initiating PIXL Orders. Therefore, offering Firms an opportunity to deliver orders into the PIXL auction, for purposes of price improvement, benefits all market participants by incentivizing order interaction in PIXL. Also, the Exchange's proposal is similar to pricing at CBOE,[40] except the Exchange is offering to reduce the Initiating Order Fee to $0.00 for a Firm only when the Initiating Order is contra to a Customer PIXL Order that is greater than 999 contracts, otherwise there is a fee.

The Exchange's proposal to amend PIXL pricing at Section IV, Part A of the Pricing Schedule to reduce the Initiating Order fee to $0.00 for a Firm that is contra to a Customer PIXL Order that is greater than 999 contracts is equitable and not unfairly discriminatory for the reasons which follow. With respect to the increased differential as between Firms and other market participants, except Customers, who will continue to pay either the $0.07 or the $0.05 per contract Initiating Order Fee,[41] the Exchange believes that, as mentioned above, Firms typically execute such large institutional orders as compared to other market participants. Customers do not pay a fee when contra to an Initiating Order.[42] It is only in a limited circumstance where the Firm would pay no fee because the Firm Initiating Orders must be contra to a Customer PIXL Order that is greater than 999 contracts, otherwise there is a fee. Further, by assessing no fees, Firms should be incentivized to execute more orders on the Exchange. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Likewise, the proposal would increase the differential as between other market participants, except Customers, that would pay the $0.30 per contract PIXL Order fee when they are contra to an Initiating Order[43] and the Firm that would not pay a fee, but only in the limited circumstance that the Firm is contra to a Customer PIXL Order and that order is greater than 999 contracts. Customers do not pay a fee when contra to an Initiating Order.[44] Similar to Firm Facilitation on the Exchange's trading floor, such fees serve to encourage Firms to facilitate Customer order flow. As noted herein, Exchange seeks to encourage Firms to initiate PIXL auctions within the PIXL auction mechanism in an effort to lower execution charges by transacting with a Customer PIXL Order. When a Firm enters an Initiating Order market participants are afforded an opportunity to respond to the order which should in turn generate additional responders to a PIXL auction. All market participants are eligible to respond to an Initiating PIXL Orders. Therefore, offering Firms an opportunity to deliver orders into the PIXL auction, for purposes of price improvement, benefits all market participants by incentivizing order interaction in PIXL. Today, the differential for Firm floor facilitation is $0.25 per contract.[45] While this differential is wider, it is not applicable on all transactions but only in the limited circumstance that the Firm is contra to a Customer PIXL Order and that order is greater than 999 contracts. As explained herein, Firms typically execute such large institutional orders as compared to other market participants.

For these reasons, the Exchange believes the proposal is equitable and not unfairly discriminatory.

FLEX Pricing

The Exchange's proposal to add a new Part B to Section IV entitled ''FLEX Transaction Fees'' and to amend the FLEX pricing is reasonable for the reasons which follow. With respect to Multiply Listed Options the Exchange is proposing to increase the FLEX Options pricing for Professionals, Specialists, Market Makers, Broker-Dealers and Firms from $0.10 to $0.15 per contract, which should not discourage market participants from transacting FLEX Options.[46] The Exchange has not recently amended these fees. The FLEX Options are transacted on the Exchange's trading floor and the process is not automated. Exchange staff is involved in the process of processing requests for FLEX Orders and costs associated with the Exchange's trading floor have risen over the years. The Exchange believes that the increase will assist the Exchange in offsetting costs while keeping such costs competitive with other markets. The Exchange believes that its proposal to amend the Multiply Listed Options FLEX pricing is equitable and not unfairly discriminatory because the Exchange is assessing the same fees for Multiply Listed Options on all market participants, except Customers. Customers traditionally are not assessed transaction fees because Customer orders bring valuable liquidity to the market. The Exchange believes that the cost to transact FLEX Options remains competitive with costs at other options Exchanges.[47]

The Exchange is not otherwise proposing to amend its treatment of FLEX pricing. As is the case today, the Monthly Firm Fee Cap, the Monthly Market Maker Cap and the Options Surcharges in BKX, MNX and NDX will continue to apply. Also, the Exchange is not amending the FLEX pricing for Singly Listed Options, which will continue to be assessed the pricing in Section III of the Pricing Schedule. The Exchange will also continue to waive FLEX transaction fees for a Firm when such members are trading in their own proprietary accounts pursuant to Exchange Rule 1064, as is the case today. The Exchange's proposal to clarify that FLEX Options are not eligible for strategy treatment is reasonable, equitable and not unfairly discriminatory because today market participants may not mark a FLEX Option as eligible for a strategy transaction. The Exchange believes that adding a clarifying sentence to specifically state that FLEX Options will not qualify for strategy treatment will clarify the Pricing Schedule to the benefit of all market participants.

[40] For facilitation orders on CBOE, other than SPX, SPXpm, SRO, VIX or other volatility indexes, OEX or XEO, no Clearing Trading Permit Holder Proprietary transaction fees are assessed to a Firm. CBOE defines facilitation orders as any paired order in which a Clearing Trading Permit Holder (F) origin code is contra to any other origin code, provided the same executing broker and clearing firm are on both sides of the order) executed in AIM, open outcry, or as a QCC or FLEX transaction. *See* CBOE's Fees Schedule.

[41] The Initiating Order Fee is $0.07 per contract or $0.05 per contract depending on whether the Customer Rebate Program Threshold Volume defined in Section B is greater than 100,000 contracts per day in a month.

[42] *See* Section IV, Part A of the Pricing Schedule.

[43] Section IV, Part A of the Pricing Schedule provides when the PIXL Order is contra to the Initiating Order a Customer PIXL Order will be assessed $0.00 and all non-Customer market participant PIXL Orders will be assessed $0.30 per contract when contra to the Initiating Order for PIXL Order executions in Section I, Select Symbols, as well as in Section II, Multiply Listed Options.

[44] *See* Section IV, Part A of the Pricing Schedule.

[45] All market participants, except Customers, are assessed a Penny Pilot Option and Non-Penny Pilot Option Transaction Charge of $0.25 per contract for floor transactions. *See* Section II of the Pricing Schedule.

[46] FLEX Transaction Customer Fees for Multiply Listed Orders on the Exchange's trading floor will continue to be assessed fee for transacting FLEX Options

[47] *See* CBOE's Fees Schedule.

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 believes that its proposal to amend Category A of the Customer Rebate Program does not impose an undue burden on competition because the Exchange is offering to pay Customer rebates on PIXL Orders greater than 999 contracts regardless of the contra party for all market participants. The Exchange believes that assessing additional fees to Specialists and Market Makers does not create an undue burden on competition because the Exchange is proposing to offer Customers a rebate which should attract Customer order flow to the benefit of Specialists, Market Makers and other market participants that interact with such order flow. Today, the Exchange assesses Specialists and Market Makers PFOF for electronic transaction to similarly attract order flow to the Exchange when the Specialist and Market Maker are contra to a Customer order.

The PIXL pricing is proposed to incentivize Firms to bring Initiating Orders to a PIXL auction. The Exchange does not believe that the proposed PIXL pricing creates an undue burden on competition, but rather encourages competition among market participants to price improve the order. Other market participants may respond to a PIXL Initiating Order. The Exchange does not believe that the differentials created as between Firms and other market participants, in terms of the cost of participating in a PIXL transaction, while greater, creates an undue burden on competition because the Firm Initiating Order Fee will only be reduced in limited circumstances and most likely by a Firm. By reducing the Initiating Order Fee for a Firm in these limited circumstances, the Exchange is incentivizing Firms to execute more orders on the Exchange. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity.

The FLEX pricing in Multiply Listed Options is the same pricing for all market participants except Customers, who are not assessed FLEX Options transaction fees in Multiply Listed Options because Customer order brings liquidity to the market which benefits all market participants. The Exchange does not believe that the FLEX pricing creates an undue burden on competition.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[48] 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–2013–49 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–2013–49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–49 and should be submitted on or before June 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Kevin M. O'Neill,

Deputy Secretary.

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[48] 15 U.S.C. 78s(b)(3)(A)(ii).

[49] 17 CFR 200.30–3(a)(12).