

To the extent that the proposed amendments will change the way members report to FINRA, they will affect only those members that execute and report OTC equity trades to FINRA.<sup>35</sup> For example, many firms, including smaller firms, route their order flow to another firm, e.g., their clearing firm, for execution, and as the routing firm, they do not have the trade reporting obligation. Today, on average, only several hundred members regularly report trades to the FINRA Facilities. For example, for the eight-month period from August 2012 through April 2013, 456 firms reported at least one trade, and of those firms, 186 reported fewer than 10 trades. Thus, the amendments will have no impact on many members.

Nonetheless, some members will need to make systems programming changes to comply with the proposed amendments (e.g., members that execute the types of transactions for which two times will be required, members that execute trades on non-business days, etc.). FINRA believes these changes will enhance FINRA's audit trail and surveillance capabilities and will not significantly burden competition as all firms that report OTC trades to FINRA will be subject to the same standard. The staff proposes to provide members a sufficient implementation period to accommodate such changes and may phase in implementation, if appropriate, to lessen the impact on members, as well as any potential burden on competition.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

<sup>35</sup> FINRA trade reporting rules require that for transactions between members, the "executing party" report the trade to FINRA. For transactions between a member and a non-member or customer, the member must report the trade. "Executing party" is defined under FINRA rules as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction. See Rules 6282(b), 6380A(b), 6380B(b) and 6622(b).

organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2013-050 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-FINRA-2013-050. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices 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-FINRA-

2013-050, and should be submitted on or before December 20, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

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

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-70940; File No. SR-Phlx-2013-113]

### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Offer a Customer Rebate**

November 25, 2013.

#### **I. Introduction**

On October 31, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the Customer Rebate Program in Section B of the Exchange's Pricing Schedule to increase Customer rebates available to certain market participants that transact Customer orders on Phlx. Phlx designated the proposed rule change as immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>3</sup> The Commission published notice of filing of the proposed rule change in the **Federal Register** on November 19, 2013.<sup>4</sup> To date, the Commission has received two comment letters on the proposal.<sup>5</sup>

Pursuant to Section 19(b)(3)(C) of the Act, the Commission hereby is: (1) Temporarily suspending File No. SR-Phlx-2013-113; and (2) instituting proceedings to determine whether to approve or disapprove File No. SR-Phlx-2013-113.

<sup>36</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> See Securities Exchange Act Release No. 70866 (November 13, 2013), 78 FR 69472 ("Notice").

<sup>5</sup> See letters to Elizabeth M. Murphy, Secretary, Commission from: Michael J. Simon, Secretary, International Securities Exchange, LLC, dated November 11, 2013 ("ISE Letter"); and William O'Brien, Chief Executive Officer, Direct Edge Holdings LLC, dated November 13, 2013 ("DirectEdge Letter").

## II. Summary of the Proposed Rule Change

The Exchange's proposal amends the Customer Rebate Program in Section B of the Exchange's Pricing Schedule. Under the Customer Rebate Program, the Exchange pays tiered rebates to members for certain Customer orders executed on Phlx.<sup>6</sup> In general, the tiers (there are four tiers) are based on Customer volume in multiply-listed options that member organizations under Common Ownership<sup>7</sup> transact monthly on Phlx as a percentage of total national Customer volume in multiply-listed options.<sup>8</sup> Phlx's proposal provides an additional \$0.02 per contract rebate for Customer orders executed on Phlx that currently qualify for the Customer Rebate Program provided the member organization, together with any affiliate under Common Ownership, transacts aggregate Customer volume on Phlx, The NASDAQ Options Market LLC ("NOM") and/or NASDAQ OMX BX, Inc. ("BX Options") (collectively, the "NASDAQ OMX exchanges") in multiply-listed options that is electronically delivered and executed equal to or greater than 2.5% of national Customer volume in multiply-listed options in a month.<sup>9</sup>

## III. Summary of Comments Received

As noted above, the Commission has received two comment letters on the proposed rule change.<sup>10</sup> Among other things, both commenters believe that further scrutiny and public comment of the proposal is necessary given the unprecedented nature of the proposed rule change and the potential impact the proposal could have across all exchange pricing going forward.<sup>11</sup> One commenter notes that the proposed rule change links the fees for transactions executed on Phlx to executions on two exchanges under common ownership with Phlx, which is unprecedented.<sup>12</sup> This commenter states its view that the proposed rule change raises issues of such critical importance to the national market system that it is imperative that the fee change not be in effect during the period of public comment and

<sup>6</sup> For a more detailed description of the Customer Rebate Program in Section B of the Exchange's Pricing Schedule, see Notice, *supra* note 4.

<sup>7</sup> Phlx defines Common Ownership in the Preface to the Pricing Schedule as a member or member organizations under 75% common ownership or control.

<sup>8</sup> See *supra* note 6.

<sup>9</sup> For a more detailed description of the proposed rule change, see Notice, *supra* note 4.

<sup>10</sup> See *supra* note 5.

<sup>11</sup> See ISE Letter, *supra* note 5, at 1 and DirectEdge Letter, *supra* note 5, at 1.

<sup>12</sup> See ISE Letter, *supra* note 5, at 1.

Commission consideration.<sup>13</sup> Another commenter states its view that a period of public notice and comment pursuant to Section 19(b)(2) of the Act is strongly warranted.<sup>14</sup>

## IV. Suspension of SR-Phlx-2013-113

Pursuant to Section 19(b)(3)(C) of the Act,<sup>15</sup> at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>16</sup> the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization 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.

The Commission believes it is appropriate in the public interest to temporarily suspend the proposal to solicit comment on and evaluate further the statutory basis for Phlx's proposal to vary the amount of the per contract Customer rebate that it will pay for certain transactions in options on its market based on the aggregate amount of volume in certain options across all three of the NASDAQ OMX exchanges.

In temporarily suspending the proposal, the Commission intends to further assess whether the additional Customer rebate, which is based on execution volume across the NASDAQ OMX exchanges, is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will assess whether the proposed rule change satisfies the requirements of the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>17</sup>

Therefore, the Commission finds that it is appropriate in the public interest,<sup>18</sup> for the protection of investors, and otherwise in furtherance of the purposes

<sup>13</sup> See *id.*

<sup>14</sup> See DirectEdge Letter, *supra* note 5, at 1.

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

<sup>16</sup> 15 U.S.C. 78s(b)(1).

<sup>17</sup> See 15 U.S.C. 78f(b)(4), (5) and (8).

<sup>18</sup> For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

of the Act, to temporarily suspend the proposed rule change.

## V. Proceedings To Determine Whether To Approve or Disapprove SR-Phlx-2013-113

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)<sup>19</sup> and 19(b)(2) of the Act<sup>20</sup> to determine whether Phlx's proposed rule change should be approved or disapproved. Pursuant to Section 19(b)(2)(B) of the Act,<sup>21</sup> the Commission is providing notice of the grounds for disapproval under consideration. As discussed above, the proposal increases the per contract Customer rebates for transactions on Phlx if the aggregate volume of Customer orders transacted by a member organization and its affiliates on Phlx, NOM and/or BX Options exceeds a specified volume threshold. The Act requires that exchange rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; that exchange rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and that exchange rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission intends to assess whether Phlx's proposal is consistent with these and other requirements of the Act.

The Commission believes it is appropriate to institute disapproval proceedings at this time in view of the legal and policy issues raised by the proposal. Institution of disapproval proceedings does not indicate, however, that the Commission has reached any conclusions with respect to the issues involved. The sections of the Act and the rules thereunder which are applicable to the proposed rule change include:

- Section 6(b)(4) of the Act,<sup>22</sup> which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues,

<sup>19</sup> 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *Id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *Id.*

<sup>22</sup> 15 U.S.C. 78f(b)(4).

fees, and other charges among its members and issuers and other persons using its facilities.”

- Section 6(b)(5) of the Act,<sup>23</sup> which requires that the rules of a national securities exchange be designed to, among other things, “remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest” and not be “designed to permit unfair discrimination between customers, issuers, brokers, or dealers.”

- Section 6(b)(8) of the Act,<sup>24</sup> which requires that the rules of a national securities exchange “not impose any burden on competition not necessary or appropriate” in furtherance of the Act.

#### VI. Commission’s Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as other relevant concerns. Such comments should be submitted by December 20, 2013. Rebuttal comments should be submitted by January 3, 2014. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.<sup>25</sup>

The Commission asks that commenters address the sufficiency and merit of the Exchange’s statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–Phlx–2013–113 on the subject line.

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> 15 U.S.C. 78f(b)(8).

<sup>25</sup> 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

##### 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–2013–113. 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. 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 publicly available. All submissions should refer to File Number SR–Phlx–2013–113 and should be submitted on or before December 20, 2013. Rebuttal comments should be submitted by January 3, 2014.

##### Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,<sup>26</sup> that File Number SR–Phlx–2013–113, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule changes should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Kevin M. O’Neill,**

*Deputy Secretary.*

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<sup>26</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>27</sup> 17 CFR 200.30–3(a)(57) and (58).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70925; File No. SR–FICC–2013–10]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Establish the Minimum Financial Requirements for the Existing Membership Category of Registered Investment Company Netting Members in the Government Securities Division

November 22, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that, on November 12, 2013, the Fixed Income Clearing Corporation (“FICC”) 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 FICC. 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 purpose of this rule filing is to amend the Rulebook (the “Rules”) of the Government Securities Division (the “GSD”) of FICC to establish the minimum financial requirements for the existing membership category of Registered Investment Company Netting Members (“RICs”).<sup>3</sup>

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Pursuant to the GSD Rules, the term “Registered Investment Company Netting Member” is an Investment Company (1) that is registered with the Commission, (2) admitted to membership in GSD’s Netting System pursuant to the GSD Rules, and (3) whose membership in the Netting System has not been terminated.