

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64096; File No. SR-Phlx-2011-34)

March 18, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Singly Listed Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 15, 2011, 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 its Fee Schedule to replace its Sector Index Options Fees and U.S. Dollar-Settled Foreign Currency Option Fees, in Section III of the Fee Schedule, with Singly Listed Options³ Fees. Also, the Exchange is proposing to create new fees for equities, exchange-traded funds ("ETFs") and Holding Company Depository Receipts ("HOLDERS") which are not listed on another exchange.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2011.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For purposes of this filing, a Singly Listed Option means an option that is only listed on the Exchange and is not listed by any other national securities exchange.

The text of the proposed rule change is available on the Exchange's Website 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 purpose of the proposed rule change is to create new fees titled "Singly Listed Options" to recoup the increased costs associated with Singly Listed options as compared with Multiply Listed options.

The Exchange currently assesses fees for equity options as specified in Section II of the Fee Schedule titled "Equity Options Fees." Section II includes options overlying equities, ETFs

HOLDRS, BKX⁴, RUT⁵, RMN⁶, MNX⁷ and NDX⁸. The Exchange currently assesses fees for sector index options and U.S. Dollar-Settled foreign currency options as specified in Section III of the Exchange’s Fee Schedule titled “Sector Index Options Fees and U.S. Dollar-Settled Foreign Currency Option Fees.”

The Exchange is proposing to rename Section III as “Singly Listed Options” and create fees, which would apply to options overlying currencies,⁹ equities, ETFs, indexes, and HOLDRS not listed on another exchange.¹⁰ The proposed fees are as follows:

	Customer	Professional	Specialist, ROT, SQT and RSQT	Firm	Broker- Dealer
Options Transaction Charge	\$0.35	\$0.45	\$0.35	\$0.45	\$.45

⁴ BKX represents the KBW Bank Index.

⁵ RUT represents the options on the Russell 2000® Index (the "Full Value Russell Index" or “RUT”).

⁶ RMN represents options on the one-tenth value Russell 2000® Index⁶ (the "Reduced Value Russell Index" or “RMN”).

⁷ MNX represents options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX (“MNX”).

⁸ NDX represents options on the Nasdaq 100 Index⁸ traded under the symbol NDX (“NDX”).

⁹ The applicable U.S. dollar-settled foreign currency options include XDB, XDE, XDN, XDS, XDA, XDM, XEH, XEV, XDZ, XDC and XDV (“Currencies”).

¹⁰ The Exchange receives an overnight file from The Options Clearing Corporation, the Data Distribution Service feed, which provides the Exchange a list of options which are Singly and Multiply Listed. The Exchange provides its members with a symbol directory that indicates whether a security is Singly or Multiply Listed. This information, which is available on the exchange’s website, is updated daily. In the event that a Singly Listed option becomes Multiply Listed, the option would be assessed the fees in Section II of the Fee Schedule.

The Exchange would remove the Sector Index Option Fees and the U.S. Dollar-Settled Foreign Currency Options Fees from Section III of the Exchange's Fee Schedule. Sector index options and U.S. Dollar-Settled foreign currency options would be subject to the proposed fees in Section III.¹¹ Currently, the sector index options are assessed the following fees:

	Customer	Professional	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer
Options Transaction Charge	\$.44	\$.35	\$.35	\$.30	\$.45

U.S. Dollar-Settled foreign currency options, which include XDB, XDE, XDN, XDS, XDA, XDM, XEH, XEV, XDZ, XDC and XDV, are assessed the following fees:

	Customer	Professional	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer
Options Transaction Charge	\$.44	\$.30	\$.30	\$.30	\$.45

In addition, the Exchange proposes to assess Singly Listed equities, ETFs and HOLDRS the proposed fees in Section III.¹² Singly listed equities, ETFs and HOLDRS are currently subject to the fees in Section II.¹³ The Exchange currently assesses equity options, including

¹¹ The Exchange's indexes and currencies, which are subject to the fees in Section III, are only listed on the Exchange and therefore Singly Listed.

¹² This fee proposal would not impact any equity options transacted in any of the symbols which are listed in Section I of the Exchange's Fee Schedule titled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols." The Exchange is not amending Section I.

¹³ Multiply Listed options overlying equities, ETFs, HOLDRS, BKX, RUT, RMN, MNX and NDX would continue to be subject to the fees in Section II. For purposes of this filing, a Multiply Listed security means an option that is listed on more than one exchange.

options overlying equities, ETFs, HOLDRS, BKX, RUT, RMN, MNX and NDX, the following fees which are located in Section II of the Exchange's Fee Schedule:

	Customer	Professional	Specialist, ROT, SQT and RSQT		Broker-Dealer		Firm
			Electronic	Non-Electronic	Electronic	Non-Electronic	
Options Transaction Charge (Penny Pilot)	\$.00	\$.20	\$.22	\$.25	\$.45	\$.25	\$.25
Options Transaction Charge (non-Penny Pilot)	\$.00	\$.20	\$.23	\$.25	\$.45	\$.25	\$.25
Options Surcharge in RUT, RMN, MNX and NDX	N/A	N/A	\$.15	\$.15	\$.15	\$.15	\$.15
Options Surcharge in BKX	N/A	N/A	\$.10	\$.10	\$.10	\$.10	\$.10

The Exchange is proposing to amend the Equity Options Fees in Section II by adding the words "which are Multiply Listed" to the title of Section II to clarify that Section II fees apply to Multiply Listed options.¹⁴ The Exchange also proposes to amend this title consistently throughout the Fee Schedule. The Exchange also proposes to amend Section IV of the Exchange's Fee Schedule, titled "PIXL Pricing," to replace references to "Sector Index Options Fees and U.S. Dollar-Settled Foreign Currency Options" with the words "Singly Listed Options." The Exchange is also proposing to amend the Table of Contents to reflect the proposed title for Section III, "Singly Listed Options."

¹⁴ The proposed fees in Section III would apply to Singly Listed options.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁶ 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 believes that the proposed fees for Singly Listed Options are equitable because the Exchange is seeking to recoup the operational costs for Singly Listed options, which costs are higher than those for Multiply Listed options.¹⁷ In addition, the Exchange believes that the proposed fees for Singly Listed options are equitable for the reasons specified below.

Customers currently pay: (i) no transaction fee for equity options; (ii) a \$.44 per contract fee for sector index options; and (iii) a \$.44 per contract fee for U.S. Dollar-Settled foreign currency options. The Exchange is proposing to assess a \$.35 per contract fee to Customers trading Singly Listed options which includes Currencies, equities, ETFs, Indexes and HOLDRS. Customers transacting Multiply Listed equity options, ETFs or HOLDRS are currently assessed no transaction fee and this would not change with this proposal. Customers who currently transact Singly Listed equity options, ETFs or HOLDRS would now pay \$.35 per contract.¹⁸ The Exchange believes that this fee increase is equitable because the Exchange incurs a higher

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a Multiply Listed option as compared to a Singly Listed option, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

¹⁸ This excludes equity options which are subject to Section I of the Fee Schedule titled "Fees and Rebates for Adding and Removing Liquidity in Select Symbols."

operational cost on Singly Listed options as compared to Multiply Listed options as described above. The Exchange believes that it is equitable to assess Customers \$.35 per contract to transact Currencies and indexes, because today Customers pay \$.44 per contract to transact these products. Customers would benefit from the lower fee. The Exchange is able to lower the fee by offsetting the costs with the fee increase to Customers who transact Singly Listed equity options, ETFs and HOLDRS.

The Exchange believes that it is equitable to assess Specialists,¹⁹ Registered Options Traders,²⁰ SQTs,²¹ and RSQTs²² a transaction fee of \$.35 per contract to transact Singly Listed Currencies, equities, ETFs, indexes and HOLDRS. Market makers²³ today are assessed Equity Options Fees for transacting equity options, ETFs or HOLDRS ranging from \$.10 - \$.25 per contract depending on whether the transaction is electronic²⁴ or non-electronic, a Penny Pilot²⁵

¹⁹ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

²⁰ A Registered Options Trader (“ROT”) includes a Streaming Quote Trader (“SQT”), a Remote Streaming Quote Trader (“RSQT”) and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

²¹ An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

²² A 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.

²³ The Exchange market maker category includes Specialists (see Rule 1020) and ROTs (Rule 1014(b)(i) and (ii), which includes SQTs (see Rule 1014(b)(ii)(A)) and RSQTs (see Rule 1014(b)(ii)(B)).

²⁴ Electronically delivered orders do not include orders delivered through the Floor Broker Management System.

or a non-Penny Pilot option or an option overlying RUT, RMN, MNX, NDX or BKK.²⁶ The Exchange believes that it is equitable to assess market makers \$.35 per contract for transacting Singly Listed equities, ETFs and HOLDRS pursuant to the proposed fees in Section III, because such orders would not be subject to payment for order flow. Currently, equity option transactions, including options overlying equities, ETFs, HOLDRS, BKK, RUT, RMN, MNX and NDX, are subject to certain payment for order flow fees.²⁷ The Exchange assesses Payment for Order Flow Fees of \$.25 per contract for options trading in the Penny Pilot Program and \$.70 per contract for all other equity options.²⁸ The Exchange believes that it is equitable to assess market makers a higher rate for transacting Singly Listed equities, ETFs or HOLDRS because market makers would not be subject to Payment for Order Fees, as they are today and would continue to be under this proposal, when transacting Multiply Listed equities, ETFs or HOLDRS. The Exchange believes that increasing the fee assessed for indexes and Currencies from \$.30 to \$.35 per contract is equitable because as stated previously, the Exchange is seeking to recoup

²⁵ The Penny Pilot was established in January 2007; and in October 2009, it was expanded and extended through December 31, 2010. See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74) (approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR-Phlx-2009-91) (expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR-Phlx-2009-94) (adding seventy-five classes to Penny Pilot); and 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR-Phlx-2010-12) (adding seventy-five options classes to the Penny Pilot). See also Exchange Rule 1034.

²⁶ This excludes the symbols which are subject to Section I of the Fee Schedule, titled “Fees and Rebates for Adding and Removing Liquidity in Select Symbols.”

²⁷ This excludes the symbols which are subject to Section I of the Fee Schedule, titled “Fees and Rebates for Adding and Removing Liquidity in Select Symbols.”

²⁸ There are no Payment for Order Flow Fees on trades that are not delivered electronically.

costs with respect to Singly Listed products. Additionally, the Exchange would be assessing the same fee on indexes and Currencies.

The Exchange believes that it is equitable to assess Professionals, Firms and Broker-Dealers \$.45 per contract to transact Singly Listed options including Currencies, equities, ETFs, indexes and HOLDRS. Currently, Professionals pay \$.20 per contract to transact equities, ETFs and HOLDRS, \$.35 per contract to transact indexes and \$.30 per contract to transact Currencies. The Exchange believes that the proposed \$.45 per contract Professional fee would be equitable because of the increased costs associated with Singly Listed options as explained above.

Broker-Dealers today are assessed Equity Options Fees for transacting equity options, ETFs or HOLDRS ranging from \$.10 - \$.45 per contract depending on whether the transaction is electronic or non-electronic, a Penny Pilot or non-Penny Pilot option or an option overlying RUT, RMN, MNX, NDX or BKX. The Exchange believes that the proposed Broker-Dealer fee of \$.45 per contract is equitable because it is similar to the Exchange's fees for electronic transactions in Penny Pilot and non-Penny Pilot options.²⁹ Additionally, the Exchange believes that the proposed fee for both indexes and Currencies is equitable because the rates would remain the same as today.

Finally, Firms today are assessed fees for transacting equities, ETFs and HOLDRS which range from \$.10 - \$.25 per contract. The Exchange believes that the proposed Firm fee of \$.45 per contract is equitable because of the higher costs associated with Singly Listed options as compared to Multiply Listed options as explained above. The Exchange believes that the increased costs also form an equitable basis to increase both the Broker-Dealer fees to transact indexes and Currencies from \$.30 to \$.45 per contract.

²⁹ See Section II of the Exchange's Fee Schedule.

The Exchange believes that the proposed fees are reasonable because the fees are consistent with price differentiation that exists today at all option exchanges. Other exchanges today charge different rates as between Multiply Listed products and Singly Listed products. For example, the Internal Securities Exchange, LLC (“ISE”) assesses different fees for Customers who transact Multiply Listed options, indexes, ETFs and FX Options (\$.00) as compared to Customers who transact Singly Listed indexes, ETFs and FX Options (\$.18).³⁰

The Exchange believes that the Customer rate of \$.35 per contract for Singly Listed Currencies, equities, ETFs and HOLDERS is reasonable because it is less than Customer rates assessed by NYSE Arca, Inc. (“NYSE Arca”), where a Customer electronically executing a Penny Pilot option or a foreign currency option is assessed a fee of \$.45 per contract.³¹ The Exchange believes that the Customer rate of \$.35 per contract for Singly Listed indexes is reasonable because it is less than the rate assessed by ISE for SPX³² of \$.44 per contract.³³

The Exchange believes that the proposed rate of \$.45 per contract for Singly Listed Currencies, equities, ETFs, indexes and HOLDERS for Professionals and Firms is reasonable, because the Exchange is proposing to assess Firms and Professionals the same rate assessed on Broker-Dealers today. NYSE Arca assesses Firms that electronically execute foreign currency options an equity options transaction fee of \$.45 plus a royalty fee of \$.10 per contract.³⁴ The Exchange believes it is reasonable to assess a Professional a per contract fee of \$.45 per contract for transacting Singly Listed Currencies because the Exchange is assessing all market

³⁰ See ISE’s Schedule of Fees.

³¹ See NYSE Arca’s Fee Schedule.

³² SPX refers to options on the Standard & Poor’s 500 Index.

³³ See ISE’s Schedule of Fees.

³⁴ See NYSE Arca’s Fee Schedule.

participants, except Customers and market makers, the same rate to transact Singly Listed Currencies. The Exchange believes that the price differentiation between market makers as compared to Firms, Broker-Dealers and Specialists is justified because market makers have obligations to the market, which do not apply to Firms, Professionals and Broker-Dealers.³⁵ The Exchange believes that assessing Customers a lower rate to transact Singly Listed indexes is reasonable because all market participants benefit from Customer order flow.

The Exchange believes that its proposed rate of \$.45 per contract for Singly Listed indexes is reasonable because the Chicago Board Options Exchange, Incorporated (“CBOE”) assesses a Firm and a Professional \$.40 per contract for trading SPX.³⁶ The Exchange believes that assessing Firms and Professionals \$.45 per contract in Singly Listed equities, ETFs and HOLDRs is reasonable because NYSE Arca assesses Firms and Broker-Dealers \$.50 per contract for equities, ETFs and HOLDRs that are not in the Penny Pilot.³⁷ The Exchange is not amending the rates it assesses Broker-Dealers for Singly Listed indexes and equities. The rate for Singly Listed equities, ETFs and HOLDRs is the same rate the Exchange assesses Broker-Dealers transacting electronic Penny Pilot and non-Penny Pilot orders today.³⁸ The Exchange believes that assessing Customers a lower rate to transact Singly Listed indexes is reasonable because it

³⁵ See Exchange Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

³⁶ See CBOE’s Fees Schedule. CBOE also assesses a surcharge fee of \$0.10 for SPX which applies to all non-public customer transactions, including voluntary professionals, and professionals.

³⁷ See NYSE Arca’s Fee Schedule. Presumably, this includes options only listed on NYSE Arca.

³⁸ See Section II of the Exchange’s Fee Schedule.

would increase Customer order flow to the Exchange and such increased liquidity would benefit all market participants.

Finally, the Exchange believes that assessing market makers a fee of \$.35 per contract for Singly Listed Currencies is reasonable because it is lower than the fee of \$.45 plus a royalty fee of \$.10 per contract that NYSE Arca assesses market makers that electronically execute foreign currency options.³⁹ The Exchange is not amending the fees assessed on market makers transacting Singly Listed indexes. The Exchange believes that it is reasonable to assess market makers a \$.35 per contract fee for equities, ETFs and HOLDRs because NYSE Arca assesses market makers \$.45 per contract to electronically execute Penny Pilot options.⁴⁰

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.⁴¹ 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

³⁹ See NYSE Arca's Fee Schedule.

⁴⁰ See NYSE Arca's Fee Schedule.

⁴¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2011-34 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-2011-34. This file number should be included on the subject line if e-mail 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 website (<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 website 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. 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-Phlx-2011-34, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴²

Cathy H. Ahn
Deputy Secretary

⁴² 17 CFR 200.30-3(a)(12).