

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67633; File No. SR-Phlx-2012-104)

August 9, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Pricing in Select Symbols and Multiply-Listed Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that, on August 1, 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 I of the Exchange’s Pricing Schedule titled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols,” to amend various Select Symbols,<sup>3</sup> increase certain Complex Order<sup>4</sup> Rebates for Adding Liquidity, eliminate the Complex Order Fees for Adding Liquidity, increase certain Complex Order Fees for Removing Liquidity, and eliminate a discount applicable to Customer Complex Order Rebates, and make

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

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

<sup>3</sup> The rebates and fees in Section I apply to certain Select Symbols which are listed in Section I of the Pricing Schedule.

<sup>4</sup> A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (“ETF”) coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

technical corrections to “Part B. Complex Order” in Section I. The Exchange also proposes to amend Section II of the Pricing Schedule titled “Multiply Listed Options Fees” to decrease the threshold amount which entitles members to a reduced Firm Electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options and amend the Customer Rebate Program.<sup>5</sup>

The text of the proposed rule change is available on the Exchange’s Website at <http://www.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 amend Sections I and II of the Exchange’s Pricing Schedule. Specifically, the Exchange is proposing to amend Section I of the Pricing Schedule to amend the Select Symbols, increase certain Complex Order Rebates for Adding Liquidity, eliminate Complex Order Fees for Adding Liquidity, increase certain Complex Order Fees for Removing Liquidity, eliminate a discount applicable to options overlying SPDR S&P

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<sup>5</sup> Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are Multiply Listed.

500 (“SPY”),<sup>6</sup> and to make other technical amendments. The Exchange is proposing to amend Section II of the Pricing Schedule to decrease the threshold to receive the reduced Firm Electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options and to amend the Customer Rebates Program. Each amendment will be described in more detail below.

### Section I Amendments

#### Select Symbols

The Exchange displays a list of Select Symbols in its Pricing Schedule at Section I, which symbols are subject to the rebates and fees in that section. The Exchange is proposing to add the following symbol to the list of Select Symbols in Section I of the Pricing Schedule: Arena Pharmaceuticals Inc. (“ARNA”). The Exchange is also proposing to delete the following symbols from the list of Select Symbols in Section I of the Pricing Schedule: Dell Inc. (“DELL”), and Newmont Mining Corp. (“NEM” (collectively, “Proposed Deleted Symbols”). These Proposed Deleted Symbols would be subject to the rebates and fees in Section II of the Pricing Schedule entitled “Multiply Listed Options Fees.” The Exchange believes that by adding and removing the above-referenced symbols in Section I of the Pricing Schedule the Exchange will continue to attract order flow to the Exchange.

#### Complex Order Fees

The Exchange is proposing to increase the Complex Order Rebates for Adding Liquidity from \$0.00 to \$0.10 for Specialists,<sup>7</sup> Market Makers,<sup>8</sup> Firms, Broker-Dealers and Professionals.<sup>9</sup>

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<sup>6</sup> SPY is one of the Select Symbols subject to the rebates and fees in Section I. A complete list of Select Symbols is included in Section I of the Pricing Schedule.

<sup>7</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>8</sup> A “Market Maker” includes 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)).

Additionally, the Exchange is proposing to eliminate Complex Order Fees for Adding Liquidity. The Exchange believes that these fees are no longer necessary and proposes to uniformly eliminate them for all market participants. The Exchange believes that the increase to the Complex Order Rebates for Adding Liquidity coupled with the elimination of the Complex Order Fees for Adding Liquidity will incentivize market participants to transact additional Complex Order flow on the Exchange.

The Exchange also is proposing to increase the Complex Order Fees for Removing Liquidity from \$0.36 to \$0.39 per contract for Specialists and Market Makers, and to increase the Complex Order Fees for Removing Liquidity from \$0.38 to \$0.39 per contract for Firms, Broker-Dealers, and Professionals in Select Symbols. The Exchange is proposing to increase these fees in order that it may offer additional rebates for Customer Complex Orders as described below.

#### Eliminating SPY Discount

The Exchange is proposing to remove the additional incentive for Customers who transact Complex Orders in SPY. The Exchange currently pays a Customer Complex Order Rebate for Adding Liquidity of \$0.32 per contract and a Customer Complex Order Rebate for Removing Liquidity of \$0.06 per contract, but specifies that the Exchange will increase the Customer Complex Order Rebates for Adding and Removing Liquidity by \$0.01 per contract for transactions in SPY. Therefore, with this change, Customer Complex Orders that add liquidity in SPY would receive a rebate of \$0.32 per contract and Customer Complex Orders that remove liquidity in SPY receive a rebate of \$0.06 per contract. The Exchange is eliminating the discount in lieu of offering a higher rebate for Customer Complex Orders as described below.

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<sup>9</sup> 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).

### Technical Amendments

The Exchange also is proposing to make technical corrections in Section I, Parts A and B, by replacing “\$0.00” with “N/A” for several categories. This is not a change to these fees, but a technical amendment since in these instances “N/A” better reflects that a fee is not relevant for this category rather than “\$0.00” which simply reflects that no fee is currently being charged for this category.

### Section II Amendments

#### Firm Volume Discount

The Exchange desires to continue to incentivize Firms to transact electronic orders, by providing Firms with an opportunity to pay lower fees in Section II of the Pricing Schedule by offering a lower threshold in order for Firms to receive a reduction of electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options. Currently, Firms must have a volume greater than 750,000 electronically-delivered contracts in a month to obtain the lower fees.<sup>10</sup> The Exchange proposes to lower the threshold volume from 750,000 to 600,000 electronically-delivered contracts in a month. The Exchange believes that the lower threshold would enable a greater number of Firms to take advantage of lower fees.

#### Customer Rebate Program

The Exchange recently adopted a Customer Rebate Program to incentivize members to transact Customer orders on the Exchange. Such liquidity benefits all market participants through increased liquidity. At this time, the Exchange proposes to expand its Customer Rebate Program by adding another Category of orders eligible for rebates, “Category D.” This new

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<sup>10</sup> Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options will be reduced to \$0.13 per contract for a given month provided that a Firm has volume greater than 600,000 electronically-delivered contracts in a month (“Electronic Firm Fee Discount”).

category will pay rebates to members executing electronically-delivered Customer Complex Orders in Select Symbols that add liquidity.<sup>11</sup> The Exchange proposes to pay the following rebates:

Average Daily Volume Threshold	Rebate per Contract Categories			
	Category A	Category B	Category C	Category D
0 to 49,999 contracts in a month	\$0.00	\$0.00	\$0.00	\$0.00
50,000 to 99,999 contracts in a month	\$0.07	\$0.10	\$0.10	\$0.00
Over 100,000 contracts in a month	\$0.09	\$0.12	\$0.10	\$0.05

The Customer Rebate Program consists of three tiers. The first tier (0 to 49,999 contracts in a month) and the second tier (50,000 to 99,999 contracts in a month) do not earn any rebates defined in Category D. The third tier (over 100,000 contracts in a month) pays a rebate as an additional incentive for member organizations to route Customer Complex Order flow to the Exchange for execution (\$0.05 per contract). The \$0.05 will be in addition to the Customer Complex Order Rebate for Adding Liquidity (currently \$0.32 per contract) for a total rebate of \$0.37 for Category D.

As is currently the case with Category A, B, and C, each tier or “Threshold” is calculated by totaling all applicable Multiply-Listed Options electronically-delivered Customer Orders, except electronic Qualified Contingent Cross Orders (eQCC Orders). The Exchange proposes to amend the calculation of the Average Daily Volume Threshold by totaling Customer volume in

<sup>11</sup> This rebate will be in addition to any rebate that the member receives in Section I of the Pricing Schedule.

Multiply Listed Options that are electronically-delivered and executed, except QCC Orders as defined in Exchange Rule 1080(o), and including electronically-delivered and executed Customer Complex Orders in Select Symbols (“Threshold Volume”).<sup>12</sup> The Exchange is proposing to add the word “executed” for clarity and account for the Category D rebates in the Threshold Volume Calculation. The Exchange believes that the addition of Category D will attract additional Customer order flow to the Exchange for the benefit of all market participants.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

### Select Symbols

The Exchange believes that it is reasonable to remove and add the proposed symbols from its list of Select Symbols to attract additional order flow to the Exchange. The Exchange believes that the fees and rebates in Section I will attract order flow for the newly added Select Symbol ARNA. Also, the Exchange believes that applying the fees in Section II of the Pricing Schedule to the Proposed Deleted Symbols, including the opportunity to receive payment for order flow, will attract order flow to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to remove and add the proposed symbols because the list of Select Symbols

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<sup>12</sup> Rebates will be paid on Threshold Volume in a given month, excluding electronically delivered Customer volume associated with PIXL as is the case today and Customer Complex Orders that remove liquidity.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the rebates and fees in Section I of the Pricing Schedule, which would not include the proposed deleted symbols, but would include the proposed added symbol. Also, all market participants would be uniformly subject to the fees in Section II, which would include the Proposed Deleted Symbols, but would not include the proposed added symbol.

#### Complex Order Fees

The Exchange believes its proposal to increase the Complex Order Rebates for Adding Liquidity from \$0.00 to \$0.10 for Specialists,<sup>15</sup> Market Makers, Firms, Broker-Dealers and Professionals is reasonable because the Exchange is proposing to incentivize market participants to transact additional order flow on the Exchange.

The Exchange believes that its proposal to increase the Complex Order Rebate for Adding Liquidity is equitable and not unfairly discriminatory because the Exchange is proposing to uniformly increase the rebates among market participants, except Customers. Today, Customers receive a Complex Order Rebate for Adding Liquidity of \$0.32 per contract. Customers would continue to receive a higher rebate already because Customer order flow brings unique benefits to the market which benefits all participants through increased liquidity.

The Exchange believes its proposal to eliminate Complex Order Fees for Adding Liquidity is reasonable because market participants would be incentivized to transact additional orders on the Exchange at no cost when adding liquidity. The Exchange believes its proposal to eliminate Complex Order Fees for Adding Liquidity is equitable and not unfairly discriminatory because no market participant would be assessed a Complex Order Fee for Adding Liquidity.

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<sup>15</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).



The Exchange believes its proposal to increase the Complex Order Fees for Removing Liquidity from \$0.36 to \$0.39 per contract for Specialists and Market Makers, and to increase it from \$0.38 to \$0.39 per contract for Firms, Broker-Dealers, and Professionals in Select Symbols is reasonable because the Exchange is proposing to utilize these increased fees to fund the proposed new rebates in the Customer Rebate Program. The Exchange believes that the increased Complex Order Fees for Removing Liquidity are equitable and not unfairly discriminatory because all market participants, except Customers will be assessed a uniform fee to remove liquidity. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to not assess Customers a Complex Order Fee to Remove Liquidity because Customer order flow brings unique benefits to the market. Also, Customers are not assessed a Complex Order Fee for Removing Liquidity, as is the case on competing exchanges.<sup>16</sup>

#### Eliminating SPY Discount

In addition, the Exchange believes that removing the additional \$0.01 per contract incentive, when transacting electronically-delivered SPY orders, in addition to the Customer Complex Order Rebates for Adding and Removing Liquidity in SPY is reasonable because the Exchange is proposing to incentivize members to transact Customer Complex Orders by offering an incentive in the Customer Rebate Program. The Exchange believes that the elimination of the SPY discount is equitable and not unfairly discriminatory because no market participants would be entitled to this discount.

#### Technical Amendments

The Exchange's proposal to make technical corrections in Section I, Parts A and B, by replacing "\$0.00" with "N/A" for several categories is reasonable, equitable and not unfairly

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<sup>16</sup> See the Chicago Board Options Exchange Incorporated's ("CBOE") Fees Schedule.

discriminatory because this is not a change to these fees, but a clarification that in these instances “N/A” better reflects that a fee is not relevant for this category rather than using “\$0.00” which simply reflects that no fee is currently being charged for this category.

#### Firm Volume Discount

The Exchange’s amendment to the volume threshold applicable to the Electronic Firm Fee Discount in Section II of the Pricing Schedule is reasonable because the Exchange believes that the lower threshold would allow a greater number of Firms to obtain the lower pricing when they meet the volume threshold.

The Exchange’s amendment to the volume threshold applicable to the Electronic Firm Fee Discount in Section II of the Pricing Schedule is equitable and not unfairly discriminatory because it provides all Firms with an opportunity to pay lower fees through the lower volume threshold of 600,000 electronically-delivered contracts in a month rather than the current threshold of 750,000. Today Firms that transact 750,000 electronically-delivered contracts in a month are entitled to reduce their Firm electronic Options Transaction Charges in Penny Pilot (\$0.40 per contract) and non-Penny Pilot (\$0.45 per contract) in a given month to \$0.13 per contract.<sup>17</sup> The reduction of the volume threshold from 750,000 electronically-delivered contracts in a month to 600,000 electronically-delivered contracts in a month would enable firms to obtain the reduction of fees by transacting a lower number of contracts in a month.

#### Customer Rebate Program

The Exchange’s amendment to the Customer Rebate Program is reasonable because it will provide members another manner in which to earn a rebate on the Exchange. This rebate will be in addition to any rebate that the member receives in Section I of the Pricing Schedule.

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<sup>17</sup> The Electronic Firm Fee Discount applies per member organization when such members are trading in their own proprietary account.

The Exchange believes that offering the Category D rebate and including Customer Complex Order volume in Select Symbols in the Threshold Volume, will attract additional Customer order flow to the Exchange and benefit all market participants. The Exchange believes that incentivizing members executing electronically-delivered Customer Complex Orders in Select Symbols to direct Customer order flow to the Exchange will benefit all market participants.

The Exchange's amendment to the Customer Rebate Program is equitable and not unfairly discriminatory because all market participants are eligible to receive the new rebate provided they meet both the volume and order type requirement of Category D. Also, the Exchange believes it is equitable and not unfairly discriminatory to base rebates not only on volume but on the type of orders because the Exchange would uniformly apply the rebates to all market participants by order type. The Exchange currently offers no rebate under Category D for the first tier (between 0 and 49,999 contracts in a month) and the second tier (between 50,000 and 99,000 contracts in a month). It is only in the third tier (over 100,000 contracts in a month) that there is a rebate and it is \$0.05 per contract to members that execute electronically-delivered Customer Complex Orders in any Select Symbol that adds liquidity. Further, the concept of volume tiers and rebates based on tiers is not novel. Market participants entitled to Category A, B, or C rebates are subject to Section II of the Pricing Schedule, which has no rebates. Market participants entitled to Category D rebates are subject to Section I of the Pricing Schedule and also receive the Rebate for Adding Liquidity in Section I.

The Exchange operates in a highly competitive market, comprised of ten 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.<sup>18</sup> 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:

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-104 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-2012-104. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-Phlx-2012-104 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.<sup>19</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).