

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67047; File No. SR-Phlx-2012-70)

May 23, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Relating to Reversal and Conversion Strategies

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 May 16, 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 a fee cap on equity options transactions on certain reversals<sup>3</sup> and conversion<sup>4</sup> strategies in Section II, entitled “Equity Options Fees.”<sup>5</sup> The Exchange also proposes to make technical amendments to the Pricing Schedule.

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.

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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> 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.

<sup>4</sup> Conversions are established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration.

<sup>5</sup> Section II Equity Options Fees include options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed.

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 the applicability of a fee cap relating to reversal and conversion strategies in Section II of the Pricing Schedule to conform the applicability of that cap to that of the dividend,<sup>6</sup> merger<sup>7</sup> and short stock interest<sup>8</sup> strategies cap. The Exchange believes that all strategy caps should be applied in the same manner, in this case only when such members are trading in their own proprietary accounts.

Currently, Market Maker,<sup>9</sup> Professional,<sup>10</sup> Firm and Broker-Dealer equity option transaction fees are capped at \$1,000 for dividend, merger and short stock interest strategies executed on the

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> The Exchange market maker category includes Specialists (see Rule 1020) and Registered Options Traders (see Rule 1014(b)(i) and (ii), which includes Streaming

same trading day in the same options class when such members are trading in their own proprietary accounts.<sup>11</sup> The Exchange also currently has a cap for reversal and conversion strategies wherein Market Maker, Professional, Firm and Broker-Dealer options transaction fees in Multiply Listed Options are capped at \$500 per day for reversal and conversion strategies executed on the same trading day in the same options class (“Reversal and Conversion Cap”).<sup>12</sup> The Exchange proposes to further qualify the Reversal and Conversion Cap by applying the cap only when such members are trading in their own proprietary accounts, similar to dividend, merger and short stock interest strategies.

Additionally, the Exchange proposes to make certain technical amendments to the Pricing Schedule. The Exchange recently amended the title of the Pricing Schedule from a “Fee Schedule” to a “Pricing Schedule.”<sup>13</sup> There are a few places in the Pricing Schedule, namely in Section III, Part A (Other Transaction Fees, PIXL Pricing) and Section VII ((NASDAQ OMX PSX Fees, Other Requests for Data) that still refer to a Fee Schedule. The Exchange is

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Quote Traders (“SQTs”) (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (“RSQTs”) (see Rule 1014(b)(ii)(B)). This would also include Directed Participants. The term “Directed Participant” applies to transactions for the account of a Specialist, SQT or RSQT resulting from a Customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

<sup>10</sup> The Exchange defines a “professional” as 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) (hereinafter “Professional”).

<sup>11</sup> Equity option transaction fees for dividend, merger and short stock interest strategies combined will be further capped at the greater of \$10,000 per member or \$25,000 per member organization.

<sup>12</sup> The Reversal and Conversion Cap applies to executions occurring on either of the two days preceding the standard options expiration date, which is typically the third Thursday and Friday of every month.

<sup>13</sup> See Securities Exchange Act Release No. 66668 (March 28, 2012), 77 FR 20090 (April 3, 2012) (SR-Phlx-2012-35).

proposing to amend those references from “Fee Schedule” to a “Pricing Schedule.” The Exchange is also proposing to remove a reference in Section I (Rebates and Fees for Adding and Removing Liquidity in Select Symbols) to the Market Exhaust auction. The Exchange recently filed a rule change to discontinue the Market Exhaust functionality, a feature of the Exchange’s PHLX XL® automated trading system.<sup>14</sup> The reference to Market Exhaust was deleted from Rule 1080(c). This functionality was discontinued as of January 31, 2012. The Exchange proposes to remove a reference to Market Exhaust in Section I of the Pricing Schedule. Finally, the Exchange purposes to replace certain reference symbols with numbers for clarity in various sections of the Pricing Schedule.<sup>15</sup>

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>16</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>17</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.

The Exchange believes that the proposed amendment to the applicability of the Reversal and Conversion Cap is reasonable because the Exchange is proposing to apply the cap only when such members are trading in their own proprietary account, which is the case today for dividend, merger and short stock interest strategies. All members would continue to be offered an opportunity to reduce option transaction fees in Multiply Listed options for reversals and

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<sup>14</sup> See Securities Exchange Act Release No. 66087 (January 3, 2012), 77 FR 1095 (January 9, 2012) (SR-Phlx-2011-182).

<sup>15</sup> For example, various symbols such as “∞,” “+” and other symbols that are non-numeric, while be replaced with numbers.

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

<sup>17</sup> 15 U.S.C. 78f(b)(4).

conversions.<sup>18</sup> The Exchange also believes that the proposed amendment to the applicability of the Reversal and Conversion Cap is equitable and not unfairly discriminatory because the Exchange would uniformly apply the reversal cap to all members.

The Exchange believes that the technical amendments are reasonable, equitable and not unfairly discriminatory because the Exchange intends to amend the Pricing Schedule to conform the text to recent rule amendments which eliminated and/or replaced certain references.

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>19</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.

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<sup>18</sup> Customers are not subject to the Reversal and Conversion Cap because they do not pay option transaction charges for reversal and conversion strategies.

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-70 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-2012-70. 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-2012-70 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>20</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).