

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67830; File No. SR-Phlx-2012-112)

September 11, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rebates and Fees for Adding and Removing Liquidity in Select Symbols

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 31, 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 the Exchange’s Pricing Schedule at Section I titled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols.”<sup>3</sup> Specifically, the Exchange proposes to amend certain Simple Order Fees for Removing Liquidity. The Exchange also proposes various technical amendments to the Pricing Schedule.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on September 4, 2012.

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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.

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 Section I of the Exchange's Pricing Schedule. Specifically, the Exchange is proposing to amend Section I of the Pricing Schedule to increase certain Simple Order Fees for Removing Liquidity. Despite the increase to these fees, the Exchange believes that the fees remain competitive with fees assessed by other options exchanges.

The Exchange is also proposing to make technical amendments to Section I of the Pricing Schedule.

The Exchange is proposing to amend Section I, Part A of the Pricing Schedule to increase the Simple Order Fees for Removing Liquidity for Customers from \$0.39 per contract to \$0.43

per contract and increase the Simple Order Fees for Removing Liquidity for Specialists<sup>4</sup> and Market Makers<sup>5</sup> from \$0.39 to \$0.45 per contract.

Also, the Exchange is proposing to make technical corrections in Section I, Part A 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.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</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 its proposal to increase the Simple Order Fees for Removing Liquidity for Customers, from \$0.39 to \$0.43 per contract, and the Simple Order Fees for Removing Liquidity for Specialists and Market Makers, from \$0.39 to \$0.45 per contract, is reasonable because the increases remain competitive with fees assessed by other options exchanges.<sup>8</sup>

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<sup>4</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>5</sup> A “Market Maker” includes Registered Options Traders (“ROTs”) (Rule 1014(b)(i) and (ii), which include Streaming Quote Traders (“SQTs”) (See Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (“RSQTs”) (See Rule 1014(b)(ii)(B)).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> NYSE Arca, Inc. assesses Customers, Firms, Broker-Dealers and Market Makers a \$0.45 take fee. See NYSE Arca, Inc.’s Fee Schedule.

The Exchange believes that its proposal to increase the Simple Order Fees for Removing Liquidity for Customers, Specialists and Market Makers is equitable and not unfairly discriminatory because the Exchange would assess all market participants, except Customers, a \$0.45 per contract Simple Order Fee for Removing Liquidity. The Exchange proposes to assess a lower Simple Order Fee for Removing Liquidity to Customers of \$0.43 per contract as compared to \$0.45 per contract for all other market participants because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants.

The Exchange believes that the technical amendments proposed to Section II, Part A are reasonable, equitable and not unfairly discriminatory because the amendments are not substantive but rather technical amendments to provide more detail in the Pricing Schedule for greater clarity.

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 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 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>9</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:

#### 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-2012-112 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-2012-112. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2012-112 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>10</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).