

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67866; File No. SR-Phlx-2012-113)

September 14, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Electronic Firm Fee Discount

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 September 4, 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 Electronic Firm Fee Discount in Section II of the Exchange’s Pricing Schedule titled “Multiply Listed Options Fees.”<sup>3</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, on the Commission’s website at <http://www.sec.gov>, 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> Section II includes 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Section II of the Exchange's Pricing Schedule titled "Multiply Listed Options Fees." Specifically, the Exchange is proposing to continue to incentivize Firms to transact electronic orders by providing Firms with an opportunity to pay lower electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options fees in Section II of the Pricing Schedule. The Exchange proposes to provide an additional incentive to Firms who have volume greater than 600,000 electronically-delivered contracts in a month.

Today, Firm electronic Options Transaction Charges in Penny Pilot (\$0.40 per contract) and non-Penny Pilot Options (\$0.45 per contract) are 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"). Under this proposal, the Exchange would continue to assess Firms the reduced electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options of \$0.13 per contract, provided the Firm meets the volume criteria. In addition, the Exchange now proposes to reduce the Firm electronic Options Transaction Charges in Penny Pilot (\$0.40 per contract) and non-Penny Pilot Options (\$0.45 per contract) for

Complex Orders<sup>4</sup> that add liquidity to no fee or \$0.00 per contract for a given month provided the Firm has volume greater than 600,000 electronically-delivered contracts in that month.<sup>5</sup> The Exchange believes the additional incentive will encourage Firms to transact a greater number of orders per month and increase liquidity on the Exchange.

## 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 amend the Electronic Firm Fee Discount to assess no fee for electronic Complex Orders that add liquidity when a Firm has volume greater than 600,000 electronically-delivered contracts in a month is reasonable. The added benefit for transacting Complex Orders that add liquidity, upon reaching the requisite volume threshold, should incentivize Firms to transact a greater number of electronically-delivered orders which brings liquidity to the Exchange to the benefit of all market participants.

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<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).

<sup>5</sup> This fee applies only to Complex Orders for symbols in Section II and excludes the Section I Select Symbols. The Electronic Firm Fee Discounts noted herein for Firms that have volume greater than 600,000 electronically-delivered contracts in a month are in lieu of the standard Options Transactions Charges noted in Section II of the Pricing Schedule.

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

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

The Exchange believes that it is equitable and not unfairly discriminatory to amend the Electronic Firm Fee Discount to assess no fee for Complex Orders that add liquidity when a Firm has volume greater than 600,000 electronically-delivered contracts in a month. All Firms will continue to have an opportunity to qualify for this incentive as they do today, provided they achieve the requisite volume. In addition to the current Electronic Firm Fee Discount offered today, Firms will have the opportunity to not be assessed a fee for electronic Complex Orders that add liquidity provided Firms have volume greater than 600,000 electronically-delivered contracts in a month. The Exchange believes this additional Electronic Firm Fee Discount will continue to attract electronic Firm volume to the Exchange.

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 by the Exchange must remain competitive with fees charged 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. To the contrary, the proposed fee reduction is a competitive response to pricing changes at national securities exchanges with which the Exchange compete for the execution of Complex Orders.

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>8</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 No. SR-Phlx-2012-113 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 No. SR-Phlx-2012-113. 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>8</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 such 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 No. SR-Phlx-2012-113 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>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).