

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68375; File No. SR-Phlx-2012-135)

December 6, 2012

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”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that, on November 30, 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 certain Singly Listed Options<sup>3</sup> Transaction Charges in Section III of the Pricing Schedule.<sup>4</sup> The Exchange is also proposing a technical amendment to its Pricing Schedule. While changes to the Pricing Schedule pursuant to this proposal are

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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> 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.

<sup>4</sup> Currently, Singly Listed Options include options overlying currencies, equities, ETFs, ETNs, indexes and HOLDRs not listed on another exchange. The following symbols are also assessed the fees in Section III for Singly Listed Options: SOX, HGX and OSX. 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 Web site, 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 Pricing Schedule.

effective upon filing, the Exchange has designated the proposed amendment to be operative on December 3, 2012.

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 III of the Exchange's Pricing Schedule to increase various options transaction charges in Singly Listed Options in order to recoup increased costs associated with Singly Listed Options as compared to Multiply Listed Options.<sup>5</sup>

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<sup>5</sup> Multiply Listed Options overlying equities, ETFs, ETNs, indexes as well as BKX, RUT, MNX and NDX would continue to be subject to the fees in Section II of the Pricing Schedule. For purposes of this filing, a Multiply Listed Option means an option that is listed on more than one exchange.

Today, the Exchange assesses Customers, Specialists<sup>6</sup> and Market Makers<sup>7</sup> a \$0.35 per contract options transaction charge for Singly Listed Options. The Customer fee will remain unchanged. The Specialist and Market Maker fees will be increased to \$0.40 per contract in Singly Listed Options. Today, the Exchange assesses Professionals,<sup>8</sup> Firms and Broker-Dealers a \$0.45 per contract options transaction charge in Singly Listed Options. These fees will be increased to \$0.60 per contract.

The Exchange is not proposing to amend other transaction fees in Section III of the Pricing Schedule. Also, the Exchange proposes to eliminate the term “HOLDRs” from its Pricing Schedule as this product is no longer traded 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>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</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 increasing the Professional, Specialist, Market Maker, Firm and Broker-Dealer options transaction charges is reasonable because the Exchange is seeking to recoup the operational costs for Singly Listed

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<sup>6</sup> A “Specialist” is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>7</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>8</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).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

Options, which costs are higher than those for Multiply Listed Options.<sup>11</sup> Also, the Exchange believes the fees are reasonable because the proposed fees are within the range of similar fees assessed at other exchanges.<sup>12</sup>

The Exchange believes that increasing the Professional, Specialist, Market Maker, Firm and Broker-Dealer options transaction charges is equitable and not unfairly discriminatory because the pricing will be comparable among similar categories of market participants, as is the case today. Professionals, Firms and Broker-Dealers, will all be assessed the same rates (\$0.60 per contract) and Customers, Specialists and Market Makers will continue to be assessed lower rates as compared to other market participants. Customer order flow is assessed the lowest fee because incentivizing members to continue to offer Customer trading opportunities in Singly Listed Options benefits all market participants through increased liquidity. The Exchange notes that Specialists and Market Makers are assessed lower options transaction charges as compared to other market participants, except Customers, because they have burdensome quoting

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<sup>11</sup> 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.

<sup>12</sup> Chicago Board Options Exchange, Incorporated (“CBOE”) assesses an \$0.80 per contract fee to Customers, Broker-Dealers, Non-Trading Permit Holder Market Makers and Professional and Voluntary Professional market participants for SPX Range Options (SRO) transactions, a proprietary index, in addition to a surcharge fee. SPX refers to options on the Standard & Poor's 500 Index. See CBOE’s Fees Schedule. In addition, NASDAQ Options Market LLC (“NOM”) assesses Non-Penny Pilot Fees for Removing Liquidity ranging from \$0.82 to \$0.89 per contract depending on the market participant. See Chapter XV, Section 2. of NOM’s Rules. The Exchange also assess a Broker-Dealer an electronic options transaction charge (non-Penny Pilot) of \$0.60 per contract for transactions in Multiply Listed Options. See Section II of the Exchange’s Pricing Schedule.

obligations<sup>13</sup> to the market which do not apply to Customers, Professionals, Firms and Broker-Dealers. The proposed differentiation as between Customers, Specialists and Market Makers as compared to Professionals, Firms and Broker-Dealers recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants.

The Exchange believes that removing the term “HOLDERS” from the Pricing Schedule is reasonable, equitable and not unfairly discriminatory because the product is no longer traded on the Exchange and for clarity the term is being removed.

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. The Exchange believes its fees for Singly Listed Options products remain competitive with other fees at other options exchanges.

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>14</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

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<sup>13</sup> See Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

<sup>14</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-135 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-2012-135. 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-2012-135 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>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).