

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68376; File No. SR-Phlx-2012-139)

December 6, 2012

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

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 December 3, 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, Part B of the Exchange’s Pricing Schedule entitled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols” to apply a fee differential approved by the Commission.

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

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

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

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 Exchange filed two immediately effective rule changes, SR-Phlx-2012-27 and SR-Phlx-2012-54,<sup>3</sup> to amend certain fees and rebates in Section I, which filings were temporarily suspended by the Commission as of April 30, 2012 (“Suspension Order”).<sup>4</sup> On November 9, 2012, the Commission approved SR-Phlx-2012-27 and SR-Phlx-2012-54, as modified by Amendment No. 1, on a one-year pilot basis, with such fees being operative on December 3, 2012 (“Approval Order”).<sup>5</sup>

The Approval Order approved certain fees that were proposed by the Exchange in SR-Phlx-2012-27.<sup>6</sup> The Exchange proposes, pursuant to the Approval Order, to reinstate the Complex Order pricing differential that was suspended on April 30, 2012. In SR-Phlx-2012-27,

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<sup>3</sup> See Securities Exchange Act Release Nos. 66551 (March 9, 2012), 77 FR 15400 (March 15, 2012) (SR-Phlx-2012-27) and 66883 (April 30, 2012), 77 FR 26591 (May 4, 2012) (SR-Phlx-2012-54).

<sup>4</sup> By order dated April 30, 2012, the Commission suspended SR-Phlx-2012-27 and SR-Phlx-2012-54. See Securities Exchange Release No. 66884 (April 30, 2012), 77 FR 26595 (May 4, 2012) (SR-Phlx-2012-27 and SR-Phlx-2012-54).

<sup>5</sup> See Securities Exchange Act Release No. 68202 (November 9, 2012), 77 FR 68856 (November 16, 2012) (SR-Phlx-2012-27 and SR-Phlx-2012-54).

<sup>6</sup> Specifically, SR-Phlx-2012-27 proposed, among other things, to: (1) increase the Customer Complex Order Rebate for Adding Liquidity from \$0.30 to \$0.32 per contract, (2) create a new Complex Order Rebate for Removing Liquidity and specifically pay a Customer a \$0.06 Complex Order Rebate for Removing Liquidity, and (3) increase the Complex Order Fees for Removing Liquidity for Firms, Broker-Dealers and Professionals from \$0.35 per contract to \$0.38 per contract.

the Exchange filed to amend various fees.<sup>7</sup> The fees for execution of Complex Orders by Directed Participants and Market Makers became the subject of the Suspension Order. Specifically, the Exchange filed to amend the Directed Participant Complex Order Fee for Removing Liquidity from \$0.30 to \$0.32 per contract and the Marker Maker Complex Order Fee for Removing Liquidity from \$0.32 to \$0.37 per contract.<sup>8</sup> On April 30, 2012, the Commission suspended both SR-Phlx-2012-27 and a related filing SR-Phlx-2012-54 and instituted proceedings to determine whether the Exchange's proposed rule changes should be approved or disapproved.<sup>9</sup> The proposed \$0.05 per contract Complex Order differential as between Directed Participants and Market Makers was suspended and the \$0.02 fee differential was reinstated as of April 30, 2012.<sup>10</sup> The subsequent Approval Order approved the fees related to Complex Orders on a one-year pilot basis operative on December 3, 2012.<sup>11</sup> Since the date of the Suspension Order, the Exchange has filed amendments to Section I of its Pricing Schedule which amended certain fees and also the categories of market participants.<sup>12</sup>

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<sup>7</sup> See Securities Exchange Act Release No. 66551 (March 9, 2012), 77 FR 15400 (March 15, 2012) (SR-Phlx-2012-27).

<sup>8</sup> Id.

<sup>9</sup> The Commission noted in the Suspension Order that it "...believes it is appropriate to further evaluate the potential effect of the proposed rule changes on competition among different types of market participants and on market quality, particularly with respect to the fee differential between Directed Participants and Market Makers, and the basis for such differential put forth by the Exchange." See Securities Exchange Release No. 66884 (April 30, 2012), 77 FR 26595, 26596 (May 4, 2012) (SR-Phlx-2012-27 and SR-Phlx-2012-54).

<sup>10</sup> By order dated April 30, 2012, the Commission suspended SR-Phlx-2012-27 and SR-Phlx-2012-54. See Securities Exchange Release No. 66884 (April 30, 2012), 77 FR 26595 (May 4, 2012) (SR-Phlx-2012-27 and SR-Phlx-2012-54).

<sup>11</sup> See Securities Exchange Act Release No. 68202 (November 9, 2012), 77 FR 68856 (November 16, 2012) (SR-Phlx-2012-27 and SR-Phlx-2012-54).

<sup>12</sup> See Securities Exchange Act Release Nos. 67189 (June 12, 2012), 77 FR 36310 (June 18, 2012) (SR-Phlx-2012-77) (an immediately effective rule filing which, among other

The Exchange amended its categories of market participants to specifically define a Specialist<sup>13</sup> separate and apart from other Market Makers.<sup>14</sup> At the time of the Suspension Order, the Exchange defined a Market Maker to include Specialists and Registered Options Traders.<sup>15</sup> The Exchange redefined a Market Maker to include ROTs, SQTs and RSQTs. The Exchange eliminated the category “Directed Participant”<sup>16</sup> from the categories of market participants, and instead added Specialists as a category of market participants.<sup>17</sup>

The Exchange is therefore proposing to amend the Pricing Schedule to reflect the \$0.05 fee differential between Market Makers and Specialists that execute directed Complex Orders and those that do not that was proposed in SR-Phlx-2012-27 and SR-Phlx-2012-54. The Exchange also proposes to state in the Pricing Schedule that the fee differential is subject to a

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things, amended the Complex Order Directed Participant fee from \$0.34 to \$0.36 per contract and noted that the Complex Order fee for Removing Liquidity, applicable to Specialists and Market Makers, will be decreased by \$0.02 per contract when the Specialist or Market Maker transacts against a Customer order directed to them. This filing also established the category of Specialist); and 67633 (August 9, 2012), 77 FR 49040 (August 15, 2012) (SR-Phlx-2012-104) (an immediately effective rule filing, which, among other things, amended the Complex Order Specialist and Market Maker fees from \$0.36 to \$0.39 per contract).

<sup>13</sup> A “Specialist” is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>14</sup> See Securities Exchange Act Release No. 67189 (June 12, 2012), 77 FR 36310 (June 18, 2012) (SR-Phlx-2012-77).

<sup>15</sup> A Registered Options Trader (“ROT”) includes a Streaming Quote Trader (“SQT”), a Remote Streaming Quote Trader (“RSQT”) and a Non-SQT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

<sup>16</sup> The term “Directed Participant” applies to transactions for the account of a Specialist, Streaming Quote Trader or Remote Streaming Quote Trader 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>17</sup> See Securities Exchange Act Release Nos. 67189 (June 12, 2012), 77 FR 36310 (June 18, 2012) (SR-Phlx-2012-77).

one-year pilot. The Exchange proposes these amendments become operative on December 3, 2012 consistent with the Approval Order.<sup>18</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>19</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>20</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 also believes that it is an equitable allocation of reasonable rebates among Exchange members and other persons using its facilities.

On November 9, 2012, the Commission approved SR-Phlx-2012-27 and SR-Phlx-2012-54, as modified by Amendment No. 1, on a one-year pilot basis, with such fees being operative on December 3, 2012 (“Approval Order”).<sup>21</sup> Pursuant to that Approval Order and the reasons articulated therein, the Exchange is modifying its Pricing Schedule to reflect the \$0.05 per contract Complex Order fee differential that was proposed in SR-Phlx-2012-27 and SR-Phlx-2012-54 and approved. This filing incorporates the \$0.05 per contract Complex Order fee differential that was recently approved by the Commission.<sup>22</sup>

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<sup>18</sup> See Securities Exchange Act Release No. 68202 (November 9, 2012), 77 FR 68856 (November 16, 2012) (SR-Phlx-2012-27 and SR-Phlx-2012-54).

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(4).

<sup>21</sup> See Securities Exchange Act Release No. 68202 (November 9, 2012), 77 FR 68856 (November 16, 2012) (SR-Phlx-2012-27 and SR-Phlx-2012-54).

<sup>22</sup> To the extent that the Approval Order modified the Exchange’s Pricing Schedule by restoring a previous amendment which was not the subject of the Approval Order, the Exchange addresses those amendments in a separate rule change. See SR-Phlx-2012-137 (not yet published).

This proposal does not amend the current pricing in Section I, Part B of the Pricing Schedule other than to offer discounted pricing to Market Makers and Specialists when the Market Maker or Specialist transacts against a Customer Order directed to them by increasing the Complex Order Fee for Removing Liquidity discount from \$0.02 to \$0.05 per contract, consistent with the Approval Order.<sup>23</sup>

The Exchange believes that the proposed amendments are consistent with the Act because the proposal merely incorporates amendments approved by the Commission pursuant to an Approval Order.<sup>24</sup>

**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. Further, the Exchange notes that the Market Maker and Specialists Complex Order Fees for Removing Liquidity currently in place at the Exchange apply only to certain Select Symbols which are Multiply-Listed and highly liquid securities. As described herein, the Exchange's fees are comparable to and lower than other fee differentials today at other options exchanges. Given the highly competitive environment for options trading and the attendant benefits to investors, the Exchange believes that no exchange has market power sufficient to raise prices for competitively-traded options in an unreasonable or unfairly discriminatory manner in violation of the Exchange Act. In actuality, it is member firms that control the order flow that options markets compete to attract as evidenced by the large number of pricing-related rule changes and shifts of market share among options markets.

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<sup>23</sup> See Securities Exchange Act Release No. 68202 (November 9, 2012), 77 FR 68856 (November 16, 2012) (SR-Phlx-2012-27 and SR-Phlx-2012-54).

<sup>24</sup> Id.

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>25</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-2012-139 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.

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<sup>25</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2012-139. 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-2012-139 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>26</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>26</sup> 17 CFR 200.30-3(a)(12).