

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66985; File No. SR-Phlx-2012-61]

### 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 and Equity Options Fees

May 14, 2012.

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 1, 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, entitled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols" and Section II, entitled "Equity Options Fees"<sup>3</sup> to amend various fees and rebates within those sections.

The text of the proposed rule change is available on the Exchange's Web site 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 Exchange proposes changes to Sections I and II of the Exchange's Pricing Schedule to: (1) Amend the Monthly Firm Fee Cap; (2) eliminate a Service Fee applicable to Firms who have reached the Monthly Firm Fee Cap; and (3) amend Qualified Contingent Cross fees and rebates. The Exchange also proposes to amend Section II to: (1) Adopt a fee reduction for Firm electronic orders in Penny and non-Penny Pilot Options;<sup>4</sup> and (2) amend the Customer rebate paid for certain electronically-delivered Customer orders. The Exchange believes that the amendments described above would incentivize Firms to transact a greater number of orders at the Exchange by eliminating the Service Fee applicable to Firms, reducing the QCC Service Fee and providing an opportunity to reduce Section II fees in lieu of the elimination of electronic orders from the Monthly Firm Fee Cap. The Exchange believes that the amended rebates applicable to QCC Orders would continue to incentivize

members to transact QCC Orders. Finally, the Exchange is amending the Customer rebates on certain Penny Pilot and non-Penny Pilot Orders to attract additional Customer order flow, which should benefit all market participants.

#### Monthly Firm Fee Cap and Service Fee

Currently, Firms are subject to a maximum fee of \$75,000 ("Monthly Firm Fee Cap"). Firm equity option transaction fees and QCC Transaction Fees, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend,<sup>5</sup> merger<sup>6</sup> or short stock interest strategy<sup>7</sup> and executions subject to the Reversal and Conversion Cap<sup>8</sup> are excluded from the Monthly Firm Fee Cap.<sup>9</sup> The Firm equity options transaction fees are waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account (including FLEX and Cabinet equity options transaction fees).<sup>10</sup> QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

The Exchange proposes to amend the Monthly Firm Fee Cap to exclude electronic orders. In other words, only Firm non-electronic equity option transaction fees and QCC Transaction Fees (electronic and non-electronic) in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. The exclusions and waivers currently noted in the Pricing

<sup>4</sup> Non-Penny refers to options classes not in the Penny Pilot. The Penny Pilot was established in January 2007; and in October 2009, it was expanded and extended through June 30, 2012. See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74) (notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR-Phlx-2009-91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR-Phlx-2009-94) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR-Phlx-2010-12) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62028 (May 4, 2010), 75 FR 25890 (May 10, 2010) (SR-Phlx-2010-65) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62616 (July 30, 2010), 75 FR 47664 (August 6, 2010) (SR-Phlx-2010-103) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 63395 (November 30, 2010), 75 FR 76062 (December 7, 2010) (SR-Phlx-2010-167) (notice of filing and immediate effectiveness extending the Penny Pilot); and 65976 (December 15, 2011), 76 FR 79247 (December 21, 2011) (SR-Phlx-2011-172) (notice of filing and immediate effectiveness extending the Penny Pilot). See also Exchange Rule 1034.

<sup>5</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. See Section II of the Pricing Schedule.

<sup>6</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. See Section II of the Pricing Schedule.

<sup>7</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. See Section II of the Pricing Schedule.

<sup>8</sup> Market Maker, Professional, Firm and Broker-Dealer equity options transaction fees are capped at \$1,000 per day for reversal and conversion strategies executed on the same trading day in the same options class.

<sup>9</sup> The Monthly Firm Fee Cap is applicable to both Sections I and II of the Pricing Schedule.

<sup>10</sup> Member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account.

<sup>33</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Equity options fees include options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed, except SOX, HGX and OSX.

Schedule related to the Monthly Firm Fee Cap would remain without change.

Additionally, the Exchange currently assesses Firms that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Firm Fee Cap a \$0.07 per contract fee, excluding PIXL Orders.<sup>11</sup> The Exchange proposes to eliminate this \$0.07 per contract Service Fee as applicable to the Monthly Firm Fee Cap.

#### *Qualified Contingent Cross Orders*

Currently, the Exchange assesses Market Makers,<sup>12</sup> Professionals,<sup>13</sup> Firms and Broker-Dealers a QCC Transaction Fee of \$0.20 per contract. QCC Transaction Fees apply to both electronic QCC Orders (“eQCC”) <sup>14</sup> and Floor QCC Orders <sup>15</sup> (collectively “QCC Orders”). Today, the Exchange offers a rebate of \$0.07 per contract on all qualifying executed QCC orders up to

<sup>11</sup> “A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (“PIXL Order”) against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent (“Initiating Order”) provided it submits the PIXL order for electronic execution into the PIXL Auction (“Auction”) pursuant to Rule 1080. See Exchange Rule 1080(n).

<sup>12</sup> A “Market Maker” includes Specialists (see Rule 1020) and Registered Options Traders (“ROTs”) (Rule 1014(b)(i) and (ii), which includes Streaming Quote Traders (“SQTs”) (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (“RSQTs”) (see Rule 1014(b)(ii)(B)). Directed Participants are also Market Makers.

<sup>13</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>14</sup> A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. See Rule 1080(o). See also Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx–2011–47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (“QCTs”) that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of Regulation NMS).

<sup>15</sup> A Floor QCC Order must: (i) Be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the National Best Bid and Offer (“NBBO”); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. See Rule 1064(e). See also Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-Phlx–2011–56).

1,000,000 contracts in a month, except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend, merger or short stock interest strategy and executions subject to the Reversal and Conversion Cap. If a member exceeds 1,000,000 contracts in a month of qualifying executed QCC Orders, a \$0.11 rebate is paid on all qualifying executed QCC Orders, as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e), in that month.

The Exchange proposes to amend the current QCC Order rebates of \$0.07 per contract and \$0.11 per contract by eliminating those rebates and replacing those rebates with a tiered rebate schedule as follows:

Threshold	Rebate per contract
0 to 199,999 contracts in a month .....	\$0.00
200,000 to 499,999 contracts in a month .....	0.01
500,000 to 699,999 contracts in a month .....	0.05
700,000 to 999,999 contracts in a month .....	0.07
Over 1,000,000 contracts in a month .....	0.11

The exclusions noted in the Pricing Schedule applicable to QCC rebates would continue to apply.

Additionally, the Exchange proposes to amend the current QCC Service Fee applicable to the Monthly Firm Fee Cap. Currently, a Service Fee of \$0.07 per side is assessed once a Firm has reached the Monthly Market Maker Cap. This \$0.07 Service Fee will apply once a Firm has reached the Monthly Firm Fee Cap. This \$0.07 Service Fee will apply to every contract side of the QCC Order, as defined in Exchange Rule 1080(o) and Floor QCC Order, as defined in Exchange Rule 1064(e), after a Firm has reached the Monthly Firm Fee Cap.<sup>16</sup> The Exchange proposes to decrease this Service Fee from \$0.07 per side to \$0.01 per side.

#### *Firm Electronic Options Transaction Charges in Penny Pilot and Non-Penny Pilot Options*

The Exchange proposes to decrease the Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options by reducing the applicable Options Transactions Charges to \$.11 per contract if a Firm executed greater than 750,000 electronically-delivered contracts a month in Penny Pilot or non-Penny Pilot Options, excluding Select

<sup>16</sup> The Service Fee is not assessed to a Firm that does not reach the Monthly Firm Fee Cap in a particular calendar month.

Symbols. Currently Firms are assessed an electronic Options Transaction Charge for Penny Pilot options of \$.25 per contract and an electronic Options Transaction Charge for non-Penny Pilot options of \$.40 per contract. For example, if a Firm transacted greater than 750,000 contracts a month in Penny Pilot or non-Penny Pilot Options, then the Firm would be assessed an Options Transaction Charge of \$.11 per contract for all Penny Pilot and non-Penny Pilot Options in that given month.

#### *Customer Rebate*

The Exchange proposes to amend the applicability of a Customer rebate which is offered today for members executing electronically-delivered Customer orders in Section II of the Pricing Schedule. Currently when a member transacts an average daily volume of 50,000 Customer contracts or greater in a given month the member is entitled to a rebate of \$0.07 per contract. If the member qualified for the \$0.07 rebate and added liquidity in a non-Penny Pilot Option the member would be eligible for an additional \$0.03 per contract rebate for all qualifying Customer orders in a given month.<sup>17</sup>

The Exchange proposes to continue to offer a rebate of \$.07 per contract for members executing electronically-delivered Customer orders when a member transacts an average daily volume of 50,000 Customer contracts or greater in a given month. The Exchange is proposing to amend the applicability of the additional rebate of \$0.03 per contract. The Exchange proposes to pay the additional rebate of \$0.03 per contract to members for those electronically-delivered Customer orders that qualified for the \$0.07 rebate; and added liquidity in a Simple order in a non-Penny Pilot Option or added or removed liquidity, including auctions, in a Complex Order in a Penny Pilot Option.<sup>18</sup>

<sup>17</sup> PIXL Orders and QCC Orders are not eligible for the rebate and are excluded from the calculation of the average daily volume.

<sup>18</sup> Section II rebates and fees apply to both Simple and Complex Orders. 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).

### *Conforming Amendments*

The Exchange also proposes to amend the Pricing Schedule at Section I to amend text related to the Monthly Firm Fee Cap to correspond to the amended language in Section II by qualifying that the Monthly Firm Fee Cap will apply to non-electronic equity option transactions for Section I and Section II symbols as well as QCC electronic and non-electronic transactions. The Exchange is proposing to delete repetitive text in Section II<sup>19</sup> and simply state that the QCC Transaction fees and rebates, defined in Section II, are applicable to Section I.

### *2. Statutory Basis*

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>20</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>21</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.

### *Monthly Firm Fee Cap, Firm Volume Discount and Service Fees*

The Exchange believes that the proposal to amend the Monthly Firm Fee Cap to exclude electronic equity option transactions is reasonable because the Exchange seeks to incentivize Firms in other ways that it believes would encourage Firms to transact more volume on the Exchange. In lieu of offering Firms a cap on electronic equity option transaction fees the Exchange is seeking to remain competitive with other options exchanges by amending the application of the Monthly Firm Fee Cap and reducing the QCC Service Fee<sup>22</sup> from \$0.07 to \$0.01 per side. The Exchange desires to continue to incentivize Firms to transact electronic orders, by providing Firms with an opportunity to pay lower fees in Section II of the Pricing Schedule by offering a reduction of Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options, provided the Firm has volume greater than 750,000 electronically-delivered contracts in a month.

The Exchange believes that it is equitable and not unfairly discriminatory to offer lower transaction fees in Section II of the Pricing Schedule, in lieu of a cap on electronic

equity option transactions, and to continue to offer the cap for non-electronic transactions, including electronic and non-electronic QCC Transactions. Firms will continue to be rewarded in terms of a cap on non-electronic equity option transactions and QCC Transactions, which represents the majority of Firm executions and would be able to achieve potentially greater per contract discounts from the proposed incentive offered for equity option transactions in Section II. Further, the Exchange believes that it is equitable and not unfairly discriminatory to exclude Firm electronic equity option transactions from the Monthly Firm Fee Cap, because a Firm transacting electronic orders would still be able to include electronic (and non-electronic) QCC transactions in the Monthly Firm Fee Cap and would also have the opportunity to reduce Section II Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options if the Firm achieved a certain volume in a month.

The Exchange believes that its proposal to reduce the QCC Service Fee applicable to the Monthly Firm Fee Cap, once a Firm has reached the Monthly Firm Fee Cap, from \$0.07 per side to \$0.01 per contract side is reasonable because the Exchange will no longer apply the Monthly Firm Fee Cap as broadly, including both electronic and non-electronic equity option orders, but rather will only apply the Cap to non-electronic equity option transactions and QCC Transactions. The Exchange does not believe it is necessary to assess a \$0.07 per side Service Fee on QCC Transactions at this time to recoup costs, but instead believes it is reasonable to assess Firms a \$0.01 per contract QCC Service Fee, once Firms have reached the Monthly Firm Fee Cap, in order to recoup costs. This fee is comparable to the QCC Service Fee assessed by the International Securities Exchange, LLC ("ISE").<sup>23</sup>

Further, the Exchange believes that its proposal to reduce the QCC Service Fee applicable to the Monthly Firm Fee Cap from \$0.07 per side to \$0.01 per contract side, once a Firm has reached the Monthly Firm Fee Cap, is equitable and not unfairly discriminatory because the reduction will be uniformly applied to all Firms transacting QCC Orders and exceeding the Monthly Firm Fee Cap. The QCC Service Fee of \$0.01 per side is proposed to recoup costs incurred by the Exchange to offer this capability including trade matching and processing, post trade allocation,

submission for clearing and customer service activities related to trading activity on the Exchange.

The Exchange believes that reducing the QCC Service Fee applicable to the Monthly Firm Fee Cap from \$0.07 per side to \$0.01 per side, once the Firm has reached the Monthly Firm fee Cap is equitable and not unfairly discriminatory when compared to the Monthly Market Maker Cap because the Monthly Market Maker Cap is applicable to all equity options transaction fees and QCC Transaction Fees while the Monthly Firm Fee Cap would apply to non-electronic equity option transaction fees and QCC Transaction Fees. The corresponding reduction to the QCC Service Fee is related to the proposed amendment which would not include electronic equity option transaction fees in the Monthly Firm Fee Cap.

Additionally, the Exchange is eliminating the \$0.07 Service Fee for Firms that are on the contra-side of an electronically-delivered and executed Customer order. The Exchange believes that its proposal to eliminate the \$0.07 Service Fee for Firms that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Firm Fee Cap is reasonable because the Exchange is amending the applicability of the Monthly Firm Fee Cap to apply to non-electronic transactions and QCC Transactions, excluding electronic equity option transactions.<sup>24</sup> The Exchange believes that its proposal to eliminate the \$0.07 Service Fee for Firms that are on the contra-side of an electronically-delivered and executed Customer order and have reached the Monthly Firm Fee Cap is equitable and not unfairly discriminatory because it will be uniformly applied to all participants that qualify for the Service Fee. Further, the elimination of the Service Fee is related to the proposed amendment to exclude electronic equity option transaction fees from the Monthly Firm Fee Cap. The Exchange believes that eliminating the Service Fee is consistent with the proposed amendment to the Monthly Firm Fee Cap and its applicability to electronically-delivered orders.

### *Qualified Contingent Cross Orders Rebate Program*

The Exchange believes that its proposal to amend the current rebates applicable to QCC Orders by replacing the current \$0.07 rebate for all

<sup>19</sup> The Commission notes that the deleted text appeared in Section I.

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

<sup>21</sup> 15 U.S.C. 78f(b)(4).

<sup>22</sup> The QCC Service Fee is applicable once the Firm has reached the Monthly Firm Fee Cap.

<sup>23</sup> See ISE's Fee Schedule.

<sup>24</sup> The Commission notes that both electronic and manual QCC Transactions are included in the Monthly Firm Fee Cap.

qualifying executed QCC Orders up to 1,000,000 contracts in a month with certain exceptions or the \$0.11 per contract rebate for all qualifying executed QCC Orders over 1,000,000 with a tiered rebate schedule for QCC Orders is reasonable because the Exchange believes that the tiered schedule would continue to incentivize members. Also, the rebate structure for QCC Orders is similar to rebates at ISE.<sup>25</sup>

The Exchange believes that its proposal to amend the current rebates applicable to QCC Orders by replacing the current \$0.07 rebate for all qualifying executed QCC Orders up to 1,000,000 contracts in a month with certain exceptions or the \$0.11 per contract rebate for all qualifying executed QCC Orders over 1,000,000 with a tiered rebate schedule for QCC Orders is equitable and not unfairly discriminatory because all market participants transacting QCC Orders would be subject to the same rebate schedule.

#### *Customer Rebate*

The Exchange's proposal to amend the applicability of the Section II Customer rebate of \$0.03 for all orders in that month if the member qualified for the \$0.07 rebate and also added liquidity in a Simple non-Penny Pilot Option or added or removed liquidity in a Complex Order Penny Pilot Option (including auctions) is reasonable because this proposed amendment broadens the types of Customer orders that are potentially eligible for the increased rebate and encourages members to transact a greater number of Customer orders, which Customer order flow benefits all market participants. Specifically, creating incentives and attracting Customer orders to the Exchange benefits all market participants through increased liquidity at the Exchange.

The Exchange's proposal to amend the applicability of the Section II Customer rebate of \$0.07 for all orders in that month if the member qualified for the \$0.03 rebate and also added liquidity in a Simple non-Penny Pilot Option or added or removed liquidity in a Complex Order Penny Pilot Option (including auctions) is equitable and not unfairly discriminatory because the rebates would uniformly apply to all Customer transactions that meet the criteria for the rebate. Further, all market participants may equally qualify for the rebate.

#### *Conforming Amendments*

The Exchange's proposal to conform the text of Section I of the Pricing Schedule to reflect amendments to text in Section II of the Pricing Schedule is reasonable, equitable and not unfairly discriminatory because the amended text would clearly indicate what types of fees are included in the Monthly Firm Fee Cap and the applicability of the QCC Transaction fees and rebates. The Exchange believes that the proposed text clarifies the text of the Pricing Schedule.

The Exchange operates in a highly competitive market, comprised of nine exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee and rebate levels at a particular venue to be excessive. 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>26</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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-61 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-2012-61. This file number should be included on the subject line if email 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 Web site (<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 Web site 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-2012-61 and should be submitted on or before June 8, 2012.

<sup>25</sup> See ISE's Fee Schedule.

<sup>26</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66981; SR-NYSE-2011-56; SR-NYSEAmex-2011-86]

### Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Amex LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether to Disapprove Proposed Rule Changes To Codify Certain Traditional Trading Floor Functions That May Be Performed by Designated Market Makers and To Permit Designated Market Makers and Floor Brokers Access To Disaggregated Order Information

May 14, 2012.

On October 31, 2011, the New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex") (collectively, the "SROs") each filed with the Securities and Exchange Commission ("Commission"), 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> proposed rule changes ("SRO Proposals") to amend certain of their respective rules relating to Designated Market Makers ("DMMs")<sup>3</sup> and floor brokers. The SRO Proposals were published for comment in the **Federal Register** on November 17, 2011.<sup>4</sup> The Commission received no

comment letters on the proposals. On December 22, 2011, the Commission extended the time period in which to either approve the SRO Proposals, disapprove the SRO Proposals, or to institute proceedings to determine whether to disapprove the SRO Proposals, to February 15, 2012.<sup>5</sup>

On February 15, 2012, the Commission instituted proceedings to determine whether to disapprove the proposed rule changes.<sup>6</sup> The Commission thereafter received five comments on the proposals.<sup>7</sup> NYSE Euronext, on behalf of the SROs, submitted a response letter on March 28, 2012.<sup>8</sup>

Section 19(b)(2) of the Act<sup>9</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule changes were published for notice and comment in the **Federal Register** on November 17, 2011. May 15, 2012 is 180 days from that date, and July 14, 2012 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule changes so that it has sufficient time to consider the proposed rule changes, the issues raised in the comment letters that have been submitted in connection with the proposed rule changes, and the SROs' response to such issues in its response letter. Specifically, while commenters and the SROs noted a number of benefits to the proposals, as the

Commission noted in the Order Instituting Proceedings, the proposals raise issues such as whether DMMs and floor brokers would receive a benefit under the proposals that is disproportionate to the services they provide.<sup>10</sup>

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> designates July 14, 2012, as the date by which the Commission should either approve or disapprove the proposed rule changes (SR-NYSE-2011-56 and SR-NYSEAmex-2011-86).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66983; File No. SR-BX-2012-030]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Establishment of a New Options Market, NASDAQ OMX BX Options

May 14, 2012.

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 1, 2012, NASDAQ OMX BX, Inc. ("Exchange" or "BX") 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. On May 8, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

<sup>10</sup> See Order Instituting Proceedings, *supra* note 6 at 10589.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(57).

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

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

<sup>3</sup> Amendment No. 1 made several technical and clarifying changes to the proposal, as well as minor changes to the definitions of the terms "primary market" and "Intermarket Sweep Order." See Amendment No. 1.

<sup>27</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See NYSE Rule 98(b)(2). "DMM unit" means any member organization, aggregation unit within a member organization, or division or department within an integrated proprietary aggregation unit of a member organization that (i) has been approved by NYSE Regulation pursuant to section (c) of NYSE Rule 98, (ii) is eligible for allocations under NYSE Rule 103B as a DMM unit in a security listed on the Exchange, and (iii) has met all registration and qualification requirements for DMM units assigned to such unit. The term "DMM" means any individual qualified to act as a DMM on the Floor of the Exchange under NYSE Rule 103. See also NYSE Amex Equities Rule 2(i). Rule 2(i) defines the term "DMM" to mean an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. NYSE Amex Equities Rule 2(j) defines the term "DMM unit" as a member organization or unit within a member organization that has been approved to act as a DMM unit under NYSE Amex Equities Rule 98.

<sup>4</sup> See Securities Exchange Act Release Nos. 65735 (November 10, 2011), 76 FR 71405 (SR-

NYSEAmex-2011-86) and 65736 (November 10, 2011), 76 FR 71399 (SR-NYSE-2011-56).

<sup>5</sup> See Securities Exchange Act Release No. 66036, 76 FR 82011 (December 29, 2011).

<sup>6</sup> See Securities Exchange Act Release No. 66397, 77 FR 10586 (February 22, 2012) ("Order Instituting Proceedings").

<sup>7</sup> See Letters to Elizabeth M. Murphy, Secretary, Commission, from Kenneth Polcari, dated March 12, 2012; Patrick Armstrong and Daniel Tandy, Co-Presidents, Alliance of Floor Brokers, dated March 13, 2012; Jonathan Corpina, President, and Jennifer Lee, Vice President, Organization of Independent Floor Brokers, dated March 13, 2012; James J. Angel, Ph.D., CFA, dated March 15, 2012; and John Petschauer, CEO, EZX, Inc., dated March 14, 2012.

<sup>8</sup> See Letter to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, Executive Vice President and Corporate Secretary, NYSE Euronext, dated March 28, 2012.

<sup>9</sup> 15 U.S.C. 78s(b)(2).