

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-ISE-2012-93* and should be submitted on or before January 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68400; File No. SR-NASDAQ-2012-136]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for SOX, OSX and HGX

December 11, 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 November 30, 2012, The NASDAQ Stock Market LLC ("NASDAQ" 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 NASDAQ. 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

NASDAQ proposes to modify Chapter XV, entitled "Options Pricing," at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to increase fees for options overlying the PHLX Semiconductor Sector<sup>SM</sup> (SOX<sup>SM</sup>),

PHLX Housing Sector<sup>TM</sup> (HGX<sup>SM</sup>) and PHLX Oil Service Sector<sup>SM</sup> (OSX<sup>SM</sup>).

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 December 3, 2012.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.cchwallstreet.com>, 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. 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

NASDAQ proposes to amend certain fees in Chapter XV, Section 2. Specifically, the Exchange proposes to increase the Fees for Adding and Removing Liquidity in SOX, HGX and OSX. These products are only listed on NOM and NASDAQ OMX PHLX LLC ("Phlx").<sup>3</sup> Phlx recently filed an immediately effective rule change to amend its fees for Singly Listed Options, which include SOX, HGX and OSX, effective December 3, 2012.<sup>4</sup> NASDAQ proposes to make corresponding changes to fees for SOX, HGX and OSX effective as of December 3, 2012.

The Exchange currently assesses Customers a Fee for Adding Liquidity and a Fee for Removing Liquidity in SOX, HGX and OSX of \$0.35 per contract. This fee will remain unchanged. The Exchange assesses Professionals, Firms and Non-NOM Market Makers a Fee for Adding Liquidity and a Fee for Removing Liquidity in SOX, HGX and OSX of \$0.45 per contract. The Exchange is proposing to increase these fees to \$0.60 per contract. Finally, the Exchange currently assesses NOM Market Makers a \$0.35 per contract Fee for Adding Liquidity and a Fee for Removing Liquidity in SOX, HGX and OSX. The

Exchange proposes to increase this fee to \$0.40 per contract. The Exchange is not proposing to amend other pricing in Chapter XV, Section 2.

###### 2. Statutory Basis

NASDAQ believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</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 Fees for Adding and Removing Liquidity in SOX, HGX and OSX is reasonable because the Exchange proposes to assess the same fees which were recently increased by Phlx for SOX, HGX and OSX.<sup>7</sup> Also, the proposed fees are within the range of similar fees assessed at other exchanges.<sup>8</sup> The Exchange has previously distinguished other index products from the Non-Penny Pilot Options fees and rebates.<sup>9</sup> The Exchange

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> Despite the fact that SOX, HGX and OSX are Multiply Listed (listed on Phlx and NOM), Phlx assesses its market participants the fees for Singly Listed Options to transact index options in SOX, HGX and OSX. See Securities Exchange Act Release No. 66668 (March 28, 2012), 77 FR 20090 (April 3, 2012) (SR-Phlx-2012-35). See also Section III of Phlx's Pricing Schedule. Accordingly, Phlx recently filed an immediately effective rule change to amend its fees as of December 3, 2012 to assess the following fees to transact index options in SOX, HGX and OSX: Customers \$0.35 per contract, Professionals \$0.60 per contract, Firms \$0.60 per contract, Market Makers \$0.40 per contract, and Broker-Dealers \$0.60 per contract. Non-NOM Market Makers are registered market makers on another options market that append the market maker designation to orders routed to NOM. This is the equivalent of a Broker-Dealer on Phlx. While Phlx does not assess both a Fee for Adding Liquidity and Fee for Removing Liquidity, it assesses each side of the transaction the options transaction charge.

<sup>8</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, 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. Phlx also assesses 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. While Phlx does not assess both a Fee for Adding Liquidity and Fee for Removing Liquidity, it assesses each side of the transaction the options transaction charge.

<sup>9</sup> See Securities Exchange Act Release No. 67837 (September 12, 2012), 77 FR 57614, 77 FR 57614

<sup>21</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 Phlx's Pricing Schedule at Section III.

<sup>4</sup> See SR-Phlx-2012-135 (not yet published).

would continue to assess lower Fees for Removing Liquidity in SOX, HGX and OSX as compared to the Fees for Removing Liquidity in Non-Penny Pilot Options, which should continue to encourage NOM Participants to transact these newly listed index options. The Fees for Adding Liquidity for transactions in SOX, HGX and OSX are higher than the Fees for Adding Liquidity in Non-Penny Pilot Options, but as previously noted, the fees correspond to fees assessed by Phlx. The Exchange believes that these fees are reasonable because these fees correspond to comparable fees in place at Phlx for executions in SOX, HGX, and OSX.<sup>10</sup>

The Exchange believes that increasing the Fees for Adding and Removing Liquidity in SOX, HGX and OSX is equitable and not unfairly discriminatory because the pricing will be comparable among similar categories of market participants, namely Professionals, Firms and Non-NOM Market Makers would continue to be assessed the same fee of \$0.60 per contract. Customers and NOM Market Makers would be assessed lower fees as compared to other market participants, as is the case today. Customer order flow is assessed the lowest fee because incentivizing members to continue to offer Customer trading opportunities in options overlying SOX, HGX and OSX benefits all market participants through increased liquidity. The Exchange notes that NOM Market Makers are assessed lower fees as compared to other market participants, except Customers, because they have burdensome quoting obligations<sup>11</sup> to the market which do not apply to Customers, Professionals, Firms and Non-NOM Market Makers. The proposed differentiation as between Customers and NOM Market Makers as compared to Professionals, Firms and Non-NOM Market Makers recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants.

The Exchange also believes that it is equitable and not unfairly discriminatory to increase the NOM Market Maker Fees for Adding and Removing Liquidity in options overlying SOX, HGX and OSX by \$0.05

(September 18, 2012) (SR-NASDAQ-2012-102) (an immediately effective rule change which adopted rebates and fees relating to options on Facebook, Inc. ("FB"), Google, Inc. ("GOOG") and Groupon, Inc. ("GRPN") separate from other Non-Penny Pilot fees).

<sup>10</sup> See Phlx's Pricing Schedule at Section III.

<sup>11</sup> See Exchange Rules Section VII, Market Participants, Sections 5, Obligations of Market Makers, and Section 6, Market Maker Quotations.

per contract as compared to the \$0.15 per contract increase to Professionals, Firms and Non-NOM Market Makers because as explained above NOM Market Makers have certain obligations to the market that do not apply to other market participants. The Exchange desires to continue to assess NOM Market Makers and Customers lower fees as compared to other market participants because these participants contribute to the marketplace as described above. The Customer Fees for Adding and Removing Liquidity in options overlying SOX, HGX and OSX would remain unchanged at \$0.35 per contract. The Exchange believes that it is reasonable to assess Customers and NOM Market Makers lower fees as compared to other market participants because these market participants contribute to the market in terms of liquidity and trading environment as compared to other market participants. Also, the proposed lower fees are comparable to pricing on NOM and other options exchanges.<sup>12</sup>

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ 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 SOX, HGX and OSX remain competitive with 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.

<sup>12</sup> The Exchange assesses a lower Penny Pilot Options Fee for Removing Liquidity for Customers (\$0.45 per contract versus \$0.47 per contract for other market participants) and assesses no Non-Penny Pilot Options Fee for Adding Liquidity for Customers as compared to other market participants. The Exchange assesses a lower Non-Penny Pilot Options Fee for Adding Liquidity for NOM Market Makers as compared to other market participants (\$0.25 per contract versus \$0.45 per contract for other market participants). Finally, the Exchange assesses lower Non-Penny Pilot Options Fees for Removing Liquidity for Customers and NOM Market Makers as compared to other market participants (\$0.82 per contract versus \$0.87 per contract for other market participants). See Chapter XV, Section 2 pricing. Phlx does not assess Customers options transaction charges for Penny or Non-Penny Pilot options transactions. Also, Specialists and Market Makers are assessed lower electronic options transaction charges in Penny and Non-Penny Pilot Options as compared to Professionals, Broker-Dealers and Firms. See Section II of the Exchange's Pricing Schedule.

### **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>13</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-NASDAQ-2012-136 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-NASDAQ-2012-136. 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

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549-1090, 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 NASDAQ's principal office. 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-NASDAQ-2012-136, and should be submitted on or before January 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68403; File No. SR-OCC-2012-23]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Accommodate Certain Physically-Settled Options on U.S. Treasury Securities

December 11, 2012.

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 November 30, 2012, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. 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

OCC proposes to accommodate certain physical-settled options on the U.S. Treasury securities.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>3</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to accommodate the clearing of physically-settled options on certain U.S. Treasury notes and U.S. Treasury bonds ("Treasury Options") proposed to be traded by NASDAQ OMX PHLX, LLC ("PHLX"). OCC's current By-Laws and Rules (collectively, the "Rules") accommodate options on Treasury securities, but the options on Treasury securities contemplated by the Rules are no longer traded and are different from the Treasury Options that PHLX intends to trade in certain respects. Accordingly, OCC proposes to amend the Rules, as described below, to accommodate such Treasury Options as well as to streamline Chapter XIV of its rulebook by re-numbering certain rules and deleting unused and "reserved" rules.

The PHLX Treasury Options are limited to European-style options on Treasury notes and bonds with a unit of trading of \$10,000. OCC therefore proposes to remove provisions and references within Chapter XIV of the Rules to American-style options on Treasury securities, Treasury bills as an eligible underlying interest for options on Treasury securities, and "mini options" on Treasury securities. In addition, OCC proposes to remove from the Rules the defined term "adjusted exercise price," which related only to options on Treasury bills and consequently is no longer needed, and update other definitions within the Rules to reflect the limiting of the underlying interests for Treasury Options to Treasury bonds and notes. Furthermore, OCC does not plan to permit escrow deposits to be made in connection with the clearing of Treasury Options and proposes to remove related provisions in Section 2 of Article XIII.

OCC generally will apply current expiration date exercise procedures to Treasury Options, and will require delivery settlement for exercised and assigned Treasury Options to be effected on a broker-to-broker basis through the Fixed Income Clearing Corporation ("FICC"). Clearing members interested in Treasury Options have advised that it would be operationally more efficient for them if delivery settlement were effected in this manner. As not all OCC clearing members are participants of the Government Securities Division ("GSD") of FICC, the proposed rules would permit clearing members to designate, with proper advance notice to OCC, a representative that is a GSD participant who would be responsible for inputting trade information into FICC's systems for delivery settlement purposes. The proposed rules make it clear, however, OCC would have no obligation to such designated representative and contain the agreement of the designating clearing member to be bound by, and to hold OCC harmless against any claims based on, the designated representative's actions or delays in acting or failures to act.

On the expiration date for a Treasury Option, OCC will produce an exercise and assignment report identifying the delivering and receiving clearing members and other relevant delivery information. Clearing members that are obligated to purchase or sell Treasury securities as a result of the exercise or assignment of positions in Treasury Options will be required to submit the terms of such trades to FICC's real time trade matching system. If the trade information submitted by the delivering and receiving clearing member matches within FICC's system, FICC becomes obligated to guarantee settlement of the trade pursuant to FICC's rules, at the point in time at which FICC makes available to the delivering and receiving clearing members a report indicating the trade has been compared and OCC's obligation to guarantee delivery settlement will be terminated. Delivery settlement through FICC includes delivery of the underlying securities against payment of the aggregate purchase price increased by the amount of accrued interest. If a trade does not match, the delivering and receiving OCC clearing members will be required to notify OCC within such time as OCC may specify of such failure on the first business day after the expiration date. If no such notification is made within the deadline, pursuant to proposed Rule 1403(d), OCC's obligation to guarantee settlement will be extinguished as of

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The Commission has modified the text of the summaries prepared by OCC.