

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66488; File No. SR-Phlx-2012-22)

February 29, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity in Select Symbols

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on February 16, 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 of the Exchange’s Fee Schedule titled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols,” specifically to amend the Select Symbols³ and transaction fees for Single contra-side orders.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2012.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Select Symbols” refers to the symbols which are subject to the Rebates and Fees for Adding and Removing Liquidity in Section I of the Exchange’s Fee Schedule.

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 the list of Select Symbols in Section I of the Exchange’s Fee Schedule, entitled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols,” in order to attract additional order flow to the Exchange.

The Exchange displays a list of Select Symbols in its Fee Schedule at Section I, entitled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols,” which are subject to the rebates and fees in that section. The Exchange is proposing to delete the following symbols from the list of Select Symbols: Ciena Corporation (“CIEN”), Goldman Sachs Group, Inc. (“GS”), Halliburton Company Common Stock (“HAL”), Las Vegas Sands Corp. Common Stock (“LVS”), MGM Resorts International (“MGM”), Micron Technology, Inc. (“MU”), NVidia Corporation (“NVDA”), Qualcomm Incorporated (“QCOM”), Transocean Ltd (Switzerland) Co. (“RIG”), Rambus, Inc. (“RMBS”), Silver Wheaton Corp Common Shares (“SLW”), PowerShares DB USD Index Bull (“UUP”), Visa, Inc. (“V”), Wynn Resorts, Limited (“WYNN”), United States Steel Corporation (“X”) and SPDR S&P Oil & Gas Exploration & Production (“XOP”) (“Deleted Symbols”). These Deleted Symbols would be subject to the

rebates and fees in Section II of the Fee Schedule entitled “Equity Options Fees.”⁴ The Exchange also proposes to add the following symbols to its list of Select Symbols: iShares MSCI Emerging Index Fund (“EEM”), iShares MSCI EAFE Index Fund (“EFA”), iShares MSCI Brazil Index Fund (“EWZ”), iShares Barclays 20 Year Treasury (“TLT”), SPDR Select Sector Fund (“XLI”) and SPDR Select Sector Fund – Energy (“XLE”) (“New Select Symbols”). These New Select Symbols would be subject to the rebates and fees in Section I of the Fee Schedule.

The Exchange also proposes to amend certain of the Single contra-side transaction fees in Section I of the Fee Schedule to raise revenues and allow the Exchange to compete more effectively by subsidizing rebates for Single contra-side transactions. Specifically, the Exchange proposes to increase the Single contra-side Fee for Removing Liquidity for a Directed Participant⁵ from \$0.35 to \$0.36 per contract. The Exchange also proposes to increase the Single contra-side Fee for Removing Liquidity for Market Makers⁶ from \$0.37 to \$0.38 per contract. The Exchange does not propose to amend the Single contra-side transaction Fees for Removing Liquidity for Customers,⁷ Firms,⁸ Broker-Dealers⁹ and Professionals.¹⁰

⁴ Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are multiply listed.

⁵ The term “Directed Participant” applies to transactions for the account of a Specialist, Streaming Quote Trader (“SQT”) or Remote Streaming Quote Trader (“RSQT”) 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.

⁶ A “market maker” includes Specialists (see Rule 1020) and Registered Options Traders (“ROT”) (Rule 1014(b)(i) and (ii), which includes SQTs (see Rule 1014(b)(ii)(A)) and RSQTs (see Rule 1014(b)(ii)(B)).

⁷ Customers are assessed a \$0.39 per contract Fee for Removing Liquidity for Single contra-side transactions.

⁸ Firms are assessed a \$0.45 per contract Fee for Removing Liquidity for Single contra-side transactions.

The Exchange is also proposing to make a minor amendment to Section I of its Fee Schedule to change the caption of Section I, Part A from “Single contra-side order” to “Single contra-side.” The Exchange believes that removing the word “order” from the title will more accurately reflect the fees and rebates listed in Section I, Part A because Market Makers, for example, trade with both quotes and orders.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² 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.

The Exchange believes that it is reasonable to remove the Deleted Symbols from its list of Select Symbols to attract additional order flow to the Exchange. The Exchange believes that applying the fees in Section II of the Fee Schedule to the Deleted Symbols, including the opportunity to receive payment for order flow, will attract order flow to the Exchange. Likewise, the Exchange believes that applying the fees and rebates in Section I to the New Select Symbols would attract additional order flow to the Exchange.

⁹ Broker-Dealers are assessed a \$0.45 per contract Fee for Removing Liquidity for Single contra-side transactions.

¹⁰ Professionals are assessed a \$0.45 per contract Fee for Removing Liquidity for Single contra-side transactions.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols in order to remove the Deleted Symbols because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the rebates and fees in Section I of the Fee Schedule, which would not include the Deleted Symbols. Also, all market participants would be uniformly subject to the fees in Section II, which would include the Deleted Symbols. Likewise, the Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to add the New Select Symbols because these symbols would apply uniformly to all categories of participants in the same manner. The fees and rebates in Section I would apply uniformly to all market participants transacting the New Select Symbols.

The Exchange believes that increasing the Single contra-side Fees for Removing Liquidity for Directed Participants and Market Makers by \$0.01 per contract is reasonable because the Exchange is attempting to further subsidize the rebates it pays for Single contra-side transactions by increasing fees for certain market participants that are also recipients of rebates for Single contra-side transactions. In addition, the Exchange believes that its fees are competitive as compared to other exchanges.¹³

The Exchange believes that increasing the Single contra-side Fees for Removing Liquidity for Directed Participants and Market Makers by \$0.01 per contract is equitable and not unfairly discriminatory because both Directed Participants and Market Makers will continue to be assessed the lowest Fees for Removing Liquidity as compared to other market participants.

¹³ Both NASDAQ Options Market LLC (“NOM”) and NYSE Arca, Inc. (“NYSE Arca”) assess a remove fee of \$0.45 per contract. See NOM’s fees at Chapter XV, Section 2 and NYSE Arca’s Fee Schedule.

Market Makers¹⁴ have quoting obligations to the market which do not apply to Firms, Professionals and Broker-Dealers. Also, Directed Participants¹⁵ have higher quoting obligations as compared to other Market Makers and therefore are assessed a lower fee as compared to Market Makers.

The Exchange believes that the proposed amendment to the title of Section I, Part A to remove the word “order” is reasonable, equitable and not unfairly discriminatory because the amendment would correct the rule text to accurately reflect fees and rebates for Single contra-side transactions by eliminating the characterization of the transactions as orders.

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.¹⁶ 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

¹⁴ See Exchange Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

¹⁵ See Exchange Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

¹⁶ 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. Please include File No. SR-Phlx-2012-22 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-2012-22. 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 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-2012-22 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).