

Required fields are shown with yellow backgrounds and asterisks.

Proposed Rule Change by NASDAQ OMX PHLX LLC.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<b>Initial *</b>	<b>Amendment *</b>	<b>Withdrawal</b>	<b>Section 19(b)(2) *</b>	<b>Section 19(b)(3)(A) *</b>		<b>Section 19(b)(3)(B) *</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> Rule		<input type="checkbox"/>
<b>Pilot</b>	<b>Extension of Time Period for Commission Action *</b>	<b>Date Expires *</b>	<b>19b-4(f)(1)</b>	<b>19b-4(f)(2)</b>	<b>19b-4(f)(3)</b>	<b>19b-4(f)(4)</b>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<b>19b-4(f)(5)</b>	<b>19b-4(f)(6)</b>		
			<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

<b>Exhibit 2 Sent As Paper Document</b>	<b>Exhibit 3 Sent As Paper Document</b>
<input type="checkbox"/>	<input type="checkbox"/>

**Description**  
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name \*  Last Name \*   
Title \*   
E-mail \*   
Telephone \*  Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date   
By    
(Name \*) (Title \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information (required)**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”), 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> proposes to amend the Electronic Firm Fee Discount in Section II of the Exchange’s Pricing Schedule titled “Multiply Listed Options Fees.”<sup>3</sup>

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of the applicable portion of the Exchange’s Pricing Schedule is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on July 10, 2012. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to Angela Saccomandi Dunn, Associate General Counsel, at (215) 496-5692.

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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> Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed.

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

a. Purpose

The purpose of the proposed rule change is to amend Section II of the Exchange's Pricing Schedule titled "Multiply Listed Options Fees." Specifically, the Exchange is proposing to continue to incentivize Firms to transact electronic orders by providing Firms with an opportunity to pay lower electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options fees in Section II of the Pricing Schedule. The Exchange proposes to provide an additional incentive to Firms who have volume greater than 600,000 electronically-delivered contracts in a month.

Today, Firm electronic Options Transaction Charges in Penny Pilot (\$0.40 per contract) and non-Penny Pilot Options (\$0.45 per contract) are reduced to \$0.13 per contract for a given month provided that a Firm has volume greater than 600,000 electronically-delivered contracts in a month ("Electronic Firm Fee Discount"). Under this proposal, the Exchange would continue to assess Firms the reduced electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options of \$0.13 per contract, provided the Firm meets the volume criteria. In addition, the Exchange now proposes to reduce the Firm electronic Options Transaction Charges in Penny Pilot (\$0.40 per contract) and non-Penny Pilot Options (\$0.45 per contract) for Complex Orders<sup>4</sup> that add liquidity to no fee or \$0.00 per contract for a given month provided the

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<sup>4</sup> 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

Firm has volume greater than 600,000 electronically-delivered contracts in that month.<sup>5</sup>

The Exchange believes the additional incentive will encourage Firms to transact a greater number of orders per month and increase liquidity on the Exchange.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</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 its proposal to amend the Electronic Firm Fee Discount to assess no fee for electronic Complex Orders that add liquidity when a Firm has volume greater than 600,000 electronically-delivered contracts in a month is reasonable. The added benefit for transacting Complex Orders that add liquidity, upon reaching the requisite volume threshold, should incentivize Firms to transact a greater number of electronically-delivered orders which brings liquidity to the Exchange to the benefit of all market participants.

The Exchange believes that it is equitable and not unfairly discriminatory to amend the Electronic Firm Fee Discount to assess no fee for Complex Orders that add

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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).

<sup>5</sup> This fee applies only to Complex Orders for symbols in Section II and excludes the Section I Select Symbols. The Electronic Firm Fee Discounts noted herein for Firms that have volume greater than 600,000 electronically-delivered contracts in a month are in lieu of the standard Options Transactions Charges noted in Section II of the Pricing Schedule.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

liquidity when a Firm has volume greater than 600,000 electronically-delivered contracts in a month. All Firms will continue to have an opportunity to qualify for this incentive as they do today, provided they achieve the requisite volume. In addition to the current Electronic Firm Fee Discount offered today, Firms will have the opportunity to not be assessed a fee for electronic Complex Orders that add liquidity provided Firms have volume greater than 600,000 electronically-delivered contracts in a month. The Exchange believes this additional Electronic Firm Fee Discount will continue to attract electronic Firm volume to the Exchange.

The Exchange operates in a highly competitive market, comprised of ten exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged 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.

4. 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. To the contrary, the proposed fee reduction is a competitive response to pricing changes at national securities exchanges with which the Exchange compete for the execution of Complex Orders.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>8</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. The applicable portion of the Exchange's Pricing Schedule.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2012-113)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to the Electronic Firm Fee Discount

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 September 4, 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 the Electronic Firm Fee Discount in Section II of the Exchange’s Pricing Schedule titled “Multiply Listed Options Fees.”<sup>3</sup>

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.

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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> Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed.



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 II of the Exchange's Pricing Schedule titled "Multiply Listed Options Fees." Specifically, the Exchange is proposing to continue to incentivize Firms to transact electronic orders by providing Firms with an opportunity to pay lower electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options fees in Section II of the Pricing Schedule. The Exchange proposes to provide an additional incentive to Firms who have volume greater than 600,000 electronically-delivered contracts in a month.

Today, Firm electronic Options Transaction Charges in Penny Pilot (\$0.40 per contract) and non-Penny Pilot Options (\$0.45 per contract) are reduced to \$0.13 per contract for a given month provided that a Firm has volume greater than 600,000 electronically-delivered contracts in a month ("Electronic Firm Fee Discount"). Under this proposal, the Exchange would continue to assess Firms the reduced electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options of \$0.13 per contract, provided the Firm meets the volume criteria. In addition, the Exchange now

proposes to reduce the Firm electronic Options Transaction Charges in Penny Pilot (\$0.40 per contract) and non-Penny Pilot Options (\$0.45 per contract) for Complex Orders<sup>4</sup> that add liquidity to no fee or \$0.00 per contract for a given month provided the Firm has volume greater than 600,000 electronically-delivered contracts in that month.<sup>5</sup> The Exchange believes the additional incentive will encourage Firms to transact a greater number of orders per month and increase liquidity 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>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</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 its proposal to amend the Electronic Firm Fee Discount to assess no fee for electronic Complex Orders that add liquidity when a Firm has volume greater than 600,000 electronically-delivered contracts in a month is

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<sup>4</sup> 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).

<sup>5</sup> This fee applies only to Complex Orders for symbols in Section II and excludes the Section I Select Symbols. The Electronic Firm Fee Discounts noted herein for Firms that have volume greater than 600,000 electronically-delivered contracts in a month are in lieu of the standard Options Transactions Charges noted in Section II of the Pricing Schedule.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

reasonable. The added benefit for transacting Complex Orders that add liquidity, upon reaching the requisite volume threshold, should incentivize Firms to transact a greater number of electronically-delivered orders which brings liquidity to the Exchange to the benefit of all market participants.

The Exchange believes that it is equitable and not unfairly discriminatory to amend the Electronic Firm Fee Discount to assess no fee for Complex Orders that add liquidity when a Firm has volume greater than 600,000 electronically-delivered contracts in a month. All Firms will continue to have an opportunity to qualify for this incentive as they do today, provided they achieve the requisite volume. In addition to the current Electronic Firm Fee Discount offered today, Firms will have the opportunity to not be assessed a fee for electronic Complex Orders that add liquidity provided Firms have volume greater than 600,000 electronically-delivered contracts in a month. The Exchange believes this additional Electronic Firm Fee Discount will continue to attract electronic Firm volume to the Exchange.

The Exchange operates in a highly competitive market, comprised of ten exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged 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. To the contrary, the proposed fee reduction is a competitive response to pricing changes at national securities exchanges with which the Exchange compete for the execution of Complex Orders.

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>8</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

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-113 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-2012-113. 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 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 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-2012-113 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>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined.*

**NASDAQ OMX PHLX LLC  
PRICING SCHEDULE**

\* \* \* \* \*

**II. Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed<sup>9</sup>)**

\* \* \* \* \*

<sup>9</sup>The following symbols will be assessed the fees in Section III for Singly Listed Options: SOX, HGX and OSX.

- The Cabinet and FLEX Option Fees above are not in addition to the Options Transaction Charges.
- Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options will be reduced to \$0.13 per contract and \$0.00 for electronic Complex Orders that add liquidity for a given month provided that a Firm has volume greater than 600,000 electronically-delivered contracts in a month ("Electronic Firm Fee Discount"). The Electronic Firm Fee Discount will apply per member organization when such members are trading in their own proprietary account.

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