

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-CBOE-2012-055 and should be submitted on or before July 2, 2012.

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. 34-67121; File No. SR-Phlx-2012-73]

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

June 5, 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 25, 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 clarify the information that is required by the Exchange when executing dividend,<sup>3</sup> merger,<sup>4</sup> short stock interest<sup>5</sup> and reversals<sup>6</sup> and conversion<sup>7</sup> strategies.

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on June 1, 2012.

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.

<sup>3</sup> A dividend strategy is a transaction 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.

<sup>4</sup> A merger strategy is a transaction 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.

<sup>5</sup> A short stock interest strategy is a transaction done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

<sup>6</sup> Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration.

<sup>7</sup> Conversions are established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration.

#### 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 clarify the Exchange's requirements for members transacting strategies on the Exchange. The Exchange originally required members to submit a written rebate request form along with supporting documentation when transacting strategies to receive a rebate. On June 28, 2007, the Exchange eliminated its manual rebate process and replaced it with an automated process.<sup>8</sup> The Exchange modified its trade tickets to allow for members to designate on the trade ticket whether the trade involved a dividend, merger, or short stock interest strategy.<sup>9</sup> The Exchange later stated that in order to capture the necessary information electronically, it would require members to designate on the trade ticket whether the trade involved a dividend, merger, short stock interest or reversal and conversion strategy ("Strategy Trade"). Today, members are required to enter the proper code on the trading ticket<sup>10</sup> and into the system, or directly into the Floor Broker Management System<sup>11</sup> ("FBMS").<sup>12</sup>

At this time, the Exchange proposes to amend the process by which members may input a Strategy Trade by adopting a process to allow members to request Exchange staff on the trading floor to input a code into the system.<sup>13</sup> The Exchange realizes that there are situations where a floor broker may

<sup>8</sup> See Securities Exchange Act Release No. 55972 (June 28, 2007), 72 FR 37069 (July 6, 2007) (SR-Phlx-2007-47) (notice of filing and immediate effectiveness of proposed rule change relating to automating the rebate request process for dividend, merger and short stock interest strategies).

<sup>9</sup> *Id.*

<sup>10</sup> The Exchange has designated "Z1" for dividend strategies, "Z2" for merger strategies, "Z3" for short stock interest strategies and "Z4" for reversal and conversion strategies.

<sup>11</sup> FBMS is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. See Exchange Rule 1080, Commentary .06.

<sup>12</sup> See Securities Exchange Act Release No. 65228 (August 30, 2011), 76 FR 55453 (September 7, 2011) (SR-Phlx-2011-119) (notice of filing and immediate effectiveness of proposed rule change relating to reversal and conversion strategies).

<sup>13</sup> The system refers to PHLX XL®, the Exchange's automated trading system.

<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.

inadvertently forget to properly mark a trade as a Strategy Trade when that order is entered into FBMS.<sup>14</sup> The Exchange believes that providing members the ability to request Exchange staff to mark a Strategy Trade on the day the strategy is executed would provide members with a means to ensure the Strategy Trade is properly marked for purposes of pricing. The Exchange would require that members executing Strategy Trades either: (1) Enter a code on the trading ticket and into the system; (2) enter a code directly into FBMS; or (3) request that the information be inputted into the system by Exchange staff on the trading floor, on the day the order was executed, to take advantage of certain pricing caps for which they may qualify. The Exchange intends to issue an Options Trader Alert to members concerning the process to request Exchange staff to mark Strategy Trades.

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on June 1, 2012.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>16</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 the proposed amendment clarifying the various methods in which a member may mark Strategy Trades is reasonable because the Exchange would provide members with a means to ensure that they are able to mark a Strategy Trade in an effort to take advantage of certain caps available to them.<sup>17</sup>

The Exchange believes that the proposed amendment clarifying the various methods in which a member

may mark Strategy Trades is equitable and not unfairly discriminatory because all members would be afforded the same opportunity to mark Strategy Trades by one of the methods described herein and take advantage of certain pricing caps for which they may qualify. The Exchange's policy with respect to marking Strategy Trades would be uniformly applied to members.

### *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>18</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-2012-73 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-2012-73. 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-2012-73 and should be submitted on or before July 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>14</sup> A floor broker has the ability to enter an order directly into FBMS. If, for example, a Market Maker executed an order with a floor broker on the trading floor, the floor broker would enter the executed order into FBMS.

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

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> Market Makers, Professionals, Firms and Broker-Dealers equity option transaction fees are capped at \$1,000 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts. The Exchange also currently has a cap for reversal and conversion strategies wherein Market Maker, Professional, Firm and Broker-Dealer options transaction fees in Multiply Listed Options are capped at \$500 per day for reversal and conversion strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts.

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>19</sup> 17 CFR 200.30-3(a)(12).