

A. By order approve or disapprove such proposed rule change; or  
 B. Institute proceedings to determine whether the proposed rule change should be 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-NYSEArca-2012-59 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-NYSEArca-2012-59. 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 NYSE Arca. 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-NYSEArca-2012-59 and should be submitted on or before June 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-14758 Filed 6-15-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67189; File No. SR-Phlx-2012-77]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Participant Categories, Rebates and Fees for Adding and Removing Liquidity in Select Symbols and Multiply Listed Options

June 12, 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 31, 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: (i) Amend certain definitions in the Preface Section, including certain categories of market participants; (ii) delete the Directed Participant category in Section I of the Pricing Schedule and add a Specialist category in Sections I, II and III; (iii) amend the title of Section II fees to "Multiply Listed Options" and amend Firm fees; and (iv) make other technical modifications to the Pricing Schedule.

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.

<sup>9</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.

#### 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 to amend the Pricing Schedule, specifically the Preface, Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols" and Section II, entitled "Equity Options Fees."<sup>3</sup> The Exchange also proposes to make other conforming and technical amendments to other sections of the Pricing Schedule. The Exchange will describe the purpose of each amendment to the Pricing Schedule in greater detail below.

###### Preface and Market Participant Categories

The Exchange is proposing to amend its categories of market participants to specifically define a Specialist<sup>4</sup> separate and apart from other Market Makers. Today, the Exchange defines a Market Maker in the Preface to the Pricing Schedule to include Specialists and Registered Options Traders.<sup>5</sup> The Exchange is proposing to redefine a Market Maker to include ROTs, SQTs and RSQTs. The Exchange will eliminate the category "Directed Participant"<sup>6</sup> from the categories of

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

<sup>4</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>5</sup> A Registered Options Trader ("ROT") includes a Streaming Quote Trader ("SQT"), a Remote Streaming Quote Trader ("RSQT") and a Non-SQT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

<sup>6</sup> The term "Directed Participant" applies to transactions for the account of a Specialist, Streaming Quote Trader or Remote Streaming Quote Trader resulting from a Customer order that is (1)

market participants, and instead include a Specialist as a category of market participant. The Exchange would therefore define its pricing in terms of the following categories of market participants: Customers, Specialists, Market Makers, Firms, Broker-Dealers and Professionals.<sup>7</sup>

The Exchange is proposing to amend the Preface to remove the definition of “Directed Participant” and redefine the term “Market Maker” to exclude a Specialist. A “Specialist” would be separately defined in the Preface. Sections I, II and III would replace the “Directed Participant” category with a “Specialist” category and also add “Specialist” throughout the text of the Pricing Schedule and remove “Directed Participant.”<sup>8</sup>

The Exchange believes that the proposed changes to the market participant categories will provide additional clarity to the Exchange’s Pricing Schedule by creating categories of market participants which exist on other exchanges.

#### Section I—Rebates and Fees for Adding and Removing Liquidity in Select Symbols

The Exchange proposes to amend the categories of market participants, as specified herein, by amending the pricing tables in Parts A and B of Section I. The Exchange is proposing to amend the Fees for Removing Liquidity in Part A of Section I of the Pricing Schedule, applicable to Single contra-side orders in Select Symbols, to assess the same \$0.38 per contract Fee for Removing Liquidity to a Specialist and Market Maker for Single contra-side orders. Today, a Specialist is assessed the \$0.38 per contract Fee for Removing Liquidity when transacting a Single contra-side order.

Also, the Exchange is proposing to amend the Fees for Removing Liquidity in Part B of Section I of the Pricing Schedule, applicable to Complex Orders in Select Symbols, to assess the same \$0.36 per contract Fee for Removing Liquidity to a Specialist and Market Maker for Complex Orders. Today, a Specialist is assessed the \$0.36 per

contract Fee for Removing Liquidity when transacting a Complex Order.<sup>9</sup>

The Exchange is proposing to delete the Directed Participant categories in both Parts A and B of Section I from the pricing table. For Single contra-side orders (Part A) the Exchange would delete the \$0.23 per contract Rebate for Adding Liquidity along with the \$0.36 per contract Fee for Removing Liquidity. For Complex Orders (Part B) the Exchange would delete the \$0.10 per contract Fee for Adding Liquidity along with the \$0.34 per contract Fee for Removing Liquidity. The Exchange proposes to add a notation within the Pricing Schedule, as opposed to within the pricing tables in Parts A and B, to specify that a Specialist or Market Maker that transacts against a Customer Order directed to it for execution<sup>10</sup> will receive a \$0.02 per contract reduction of the Fees for Removing Liquidity. This notation represents the current Fees for Removing Liquidity that the Exchange assesses to Directed Participants (\$0.36 per contract Fee for Removing Liquidity for Single contra-side orders and \$0.34 Fee for Removing Liquidity for Complex Orders) in Select Symbols. A Specialist or Market Maker receiving a directed order (today a Directed Participant) transacting a Single contra-side order would continue to receive a \$0.23 per contract Rebate for Adding Liquidity. Also, a Specialist or Market Maker receiving a directed order (today a Directed Participant) transacting a Complex Order would continue to be assessed a \$0.10 per contract Fee for Adding Liquidity. Despite the fact that the Directed Participant category is being removed from the pricing table as a category, Specialists and Market Makers would continue to be assessed the same pricing as today.

The Exchange believes that noting the fees for Market Makers and Specialists who receive directed orders with a notation under the pricing table is similar to the manner in which other Exchanges display similar fees.<sup>11</sup>

#### Section II—Equity Options Fees

First, the Exchange proposes to amend the title of Section II of the Pricing Schedule from “Equity Options Fees” to “Multiply Listed Options

Fees”<sup>12</sup> to more specifically define the pricing in this section. The Exchange proposes to make the necessary amendments throughout the Pricing Schedule to amend the title of Section II as proposed herein.<sup>13</sup>

Second, the Exchange proposes to amend the Firm electronic fees for both Penny Pilot and non-Penny Pilot Options as well as a current fee discount applicable to Firms. The Exchange proposes to increase the Penny Pilot Firm electronic Options Transaction Charge from \$.25 to \$.40 per contract and also increase the non-Penny Pilot Firm electronic Options Transaction Charge from \$.40 to \$.45 per contract.

Today, the Exchange provides a Firm fee discount for Firm electronic Options Transaction Charges in Penny Pilot<sup>14</sup> and non-Penny Pilot Options. The Exchange provides that Firm electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options will be reduced to \$0.11 per contract for a given month provided the Firm has volume greater than 750,000 electronically-delivered contracts in a month. The Exchange proposes to define this discount as the “Electronic Firm Fee Discount” and further qualify the discount to apply per member organization when such members are trading in their own proprietary account. The Exchange’s Monthly Firm Fee Cap is similarly applicable when

<sup>12</sup> This currently includes, and will continue to include options overlying equities, ETFs, ETNs and HOLDRS which are Multiply Listed.

<sup>13</sup> The Exchange will make conforming amendments to Sections I, II and IV of the Pricing Schedule.

<sup>14</sup> 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.

directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

<sup>7</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>8</sup> The Exchange will make conforming amendments to Sections I, II and III of the Pricing Schedule.

<sup>9</sup> Today a Specialist falls into the Market Maker category and pays a Complex Order Fee for Removing Liquidity in Select Symbols of \$0.38 per contract and a Fee for Removing Liquidity in Select Symbols in Complex Orders of \$0.36.

<sup>10</sup> Today a Specialist or Market Maker transacting a Customer Order directed to that Specialist or Market Maker for execution is termed a “Directed Participant” and subject to that pricing.

<sup>11</sup> See the International Securities Exchange, LLC’s (“ISE”) Fee Schedule.

such members are trading in their own proprietary account.

The Exchange believes that utilizing the term “Multiply Listed” provides greater clarity to the Pricing Schedule. Amending the Firm electronic fees brings those fees more closely in line with Broker-Dealer fees and amending the Electronic Firm Fee Discount to apply per member organization when such members are trading in their own proprietary account is similar to other Exchange pricing.

#### Miscellaneous

The Exchange proposes to reorder, renumber and delete certain notes in the Preface. Remove outdated references to a “Fee Schedule” and replace it with “Pricing Schedule.”<sup>15</sup> The Exchange also proposes to capitalize certain terms and add certain acronyms in Sections I, II and IV to provide further clarity and consistency to the Pricing Schedule.

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>16</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>17</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.

#### Preface and Market Participant Categories

The Exchange’s amendment of its market participant categories to define a Specialist<sup>18</sup> separate and apart from other Market Makers is reasonable because other exchanges today similarly define a Specialist separate from other Market Makers.<sup>19</sup> The Exchange believes that separately defining a Specialist is equitable and not unfairly discriminatory because the Exchange is not proposing any changes to the fees currently assessed today for a Specialist. The Exchange will continue to assess Specialists and Market Makers the same fees and other pricing.

<sup>15</sup> See Securities Exchange Act Release No. 66668 (March 28, 2012), 77 FR 20090 (April 3, 2012) (SR-PhIX-2012-35) (a rule change which amended the title of the Exchange’s Fee Schedule to a “Pricing Schedule”).

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

<sup>17</sup> 15 U.S.C. 78f(b)(4).

<sup>18</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>19</sup> See NYSE Amex LLC’s (“Amex”) Fee Schedule.

#### Section I—Rebates and Fees for Adding and Removing Liquidity in Select Symbols

The Exchange’s amendments to the Single contra-side and Complex Order Fees for Removing Liquidity in Select Symbols, in Section I, Parts A and B are reasonable, equitable and not unfairly discriminatory because the Exchange will continue to assess Specialist and Market Makers the same fees as they are assessed today.

The Exchange believes that its proposal to eliminate the category “Directed Participant” from the categories of market participants is reasonable, equitable and not unfairly discriminatory because the Exchange today recognizes Market Makers, which includes Specialists, as a category of market participant. The Exchange instead proposes to amend the Pricing Schedule to define fees applicable to Specialists and Market Makers that execute Customer orders directed to them for execution similar to other exchanges and continues to maintain a \$0.02 fee differential. Specialists and Market Makers will continue to receive the same \$0.02 reduction in Fees for Removing Liquidity as they do today when executing against a Customer Single contra-side order (\$0.36 per contract) or Customer Complex Order (\$0.34 per contract) directed to the Specialist or Market Maker for execution. The fee differential of \$0.02 per contract as between a Specialist and Market Maker that do not execute Customer orders directed to them for execution and Market Makers and Specialists that do execute Customer orders directed to them for execution is comparable to the fee differential at ISE.<sup>20</sup> Also, Specialists and Market Makers that receive directed orders would continue to receive the \$0.23 per contract Rebate for Adding Liquidity for a Directed Participant for a Single contra-side order and would continue to be assessed the \$0.10 per contract Fee for Adding Liquidity for a Directed Participant for a Complex Order. The proposed changes are being made to accommodate the elimination of the Directed Participant category and will not result in any fee changes for Specialists and Market Makers. For these reasons, the Exchange believes that the proposed amendments to Section I to remove the category of Directed Participant and add the

<sup>20</sup> ISE has a \$.02 fee differential as between ISE Market Makers who remove liquidity from the Complex Order Book by trading with orders that are preferred to them (\$0.32 per contract) and non-preferred ISE Market Makers (\$0.34 per contract). See ISE’s Fee Schedule.

notation to the Pricing Schedule are reasonable, equitable and not unfairly discriminatory. The Exchange also believes that the amendment to relocate the text concerning the \$0.02 fee differential from the pricing table to the section below the pricing table is reasonable, equitable and not unfairly discriminatory because the Exchange will continue to assess the same fees. As noted above, the pricing for Market Makers and Specialists will remain the same.

#### Section II—Equity Options Fees

The Exchange’s proposal to amend the title of Section II of the Pricing Schedule from “Equity Options Fees” to “Multiply Listed Options Fees” is reasonable, equitable and not unfairly discriminatory because it more specifically describes the rebates and fees in Section II in terms of applicable symbols, similar to the descriptions for Sections I (referring to Select Symbols) and III (referring to Singly-Listed Options) of the Pricing Schedule.

The Exchange’s proposal to increase the Firm electronic Options Transaction Charges for both Penny Pilot and non-Penny Pilot Options is reasonable because these amendments more closely align Firm and Broker-Dealer fees. The Exchange is reducing the fee differentials as between Firms and Broker-Dealers for Firm electronic Options Transaction Charges so that the Firm fees approximate the fees assessed Broker-Dealers transacting electronic Penny Pilot and electronic non-Penny Pilot Options. These fees are also within the range of fees assessed by other exchanges.<sup>21</sup>

The Exchange believes that increasing both the Firm electronic Penny Pilot and electronic non-Penny Pilot Options Transaction Charges to \$.40 and \$.45 per contract, respectively, is equitable and not unfairly discriminatory for the reasons that follow. Today, Firms are assessed a similar electronic Penny Pilot Options Transaction Charge as a Professional (\$.25 per contract) and a higher electronic non-Penny Pilot Options Transaction Charge (\$.40 per contract) as compared to a Professional (\$.25 per contract). Similarly, Firms are assessed higher rates today as compared

<sup>21</sup> NOM assesses Fees for Removing Liquidity of \$0.45 per contract for Penny Pilot Options and assesses Fees for Removing Liquidity of \$0.45 for Customers and \$0.50 for all other market participants in Non-Penny Pilot Options. See Chapter XV, Section 2, “NASDAQ Options Market—Fees and Rebates.” NYSE Arca, Inc. (“NYSE Arca”) assesses Firm electronic orders a take fee of \$0.45 per contract. See NYSE Arca’s Fee Schedule.

to Specialists and Market Makers.<sup>22</sup> Today a Firm pays an electronic Penny Pilot Options Transaction Charge of \$.25 per contract as compared to a Specialist and Market Maker electronic Penny Pilot Options Transaction Charge of \$.22 per contract.<sup>23</sup> Today a Firm pays an electronic non-Penny Pilot Options Transaction Charge of \$.40 per contract as compared to a Specialist and Market Maker electronic non-Penny Pilot Options Transaction Charge of \$.23 per contract. The Firm electronic Penny Pilot and electronic non-Penny Pilot Options Transaction Charges which would increase to \$.40 and \$.45 per contract, respectively, would result in Firms being assessed higher fees as compared to Professionals, Specialists and Market Makers.<sup>24</sup> The Exchange notes that Specialists and Market Makers are assessed lower Options Transaction Charges as compared to other market participants, except Customers, because they have burdensome quoting obligations<sup>25</sup> to the market which do not apply to Customer, Professionals, Firms and Broker-Dealers. In addition, Specialists and Market Makers are subject to Payment for Order Flow Fees<sup>26</sup> whereas Professionals, Firms and Broker-Dealers are not subject to such fees.<sup>27</sup> The Exchange further notes that it is reasonable, equitable and not unfairly discriminatory to assess Market Makers

and Specialists lower transaction fees when compared to Firms and Broker-Dealers because Market Makers and Specialist incur higher costs than other market participants in the form of SQT and RSQT assignment fees,<sup>28</sup> ports,<sup>29</sup> posts<sup>30</sup> and other technology fees.<sup>31</sup>

With respect to Professionals, they have access to more information and technological advantages as compared to Customers, but do not bear the obligations of Specialists and Market Makers. Also, Professionals engage in trading activity similar to that conducted by Specialists and Market Makers. For example, Professionals continue to join bids and offers on the Exchange and thus compete for incoming order flow. For these reasons, the Exchange believes that Professionals may be priced higher than a Customer and may be priced equal to or higher than a Specialist or Market Maker. Also, unlike a Firm, a Professional is not able to cap certain fees and is not qualified to receive certain discounts, which provides Firms the ability to reduce certain transaction fees.<sup>32</sup>

The Exchange believes that increasing the Firm electronic Penny Pilot and electronic non-Penny Pilot Options Transaction Charges to \$.40 and \$.45 per contract, respectively, does not misalign the current rate differentials between a Firm and Broker-Dealer, but actually narrows that differential. The proposed rate differentials as between a Firm and Broker-Dealer would now be \$0.05 per contract for electronic Penny Pilot Options Transaction Charges as compared to \$.20 per contract and \$.15 per contract for electronic non-Penny Pilot Options Transaction Charges as compared to \$.20 per contract. These fee differentials are lower than differentials at other options exchanges for such market participants.<sup>33</sup>

The Exchange's proposed amendment to the Electronic Firm Fee Discount requiring Firms to trade in their own proprietary account is reasonable because the Exchange is seeking to incentivize members for trades on their behalf rather than on behalf of other members. The Exchange currently applies a similar exception with caps applicable to certain strategy executions in Section II of the Pricing Schedule and the Exchange's Monthly Firm Fee Cap. The Exchange's proposed amendment to the Electronic Firm Fee Discount requiring Firms to trade in their own proprietary account is equitable because it will be uniformly applied among market participants.

#### Miscellaneous

The Exchange's proposals to amend the Table of Contents and Section II of the Pricing to change "Equity Options" to "Multiply Listed Options," reorder notes in the Preface, capitalize certain terms, add acronyms in Sections I, II and IV and make other conforming amendments to Sections I, II, III and IV as proposed herein are reasonable, equitable and not unfairly discriminatory because they provide further clarity and consistency to 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.

side and a Non-ISE Market Maker a fee of \$.45 per contract side. See ISE's Fee Schedule.

<sup>22</sup> Today Specialists are included in the current definition of Market Maker.

<sup>23</sup> Section II of the Pricing Schedule contains electronic vs. non-electronic Options Transaction Charges only for Specialists, Market Makers, Broker-Dealers and Firms.

<sup>24</sup> Customers are not assessed Options Transaction Charges in either Penny or non-Penny Pilot options.

<sup>25</sup> See Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

<sup>26</sup> Payment for Order Flow Fees are \$.25 per contract for options that are trading in the Penny Pilot Program and \$.70 per contract for other equity options. See Section II of the Pricing Schedule.

<sup>27</sup> Payment for Order Flow Fees are assessed on transactions resulting from Customer orders and are available to be disbursed by the Exchange according to the instructions of the Specialist units/Specialists or Directed ROTs to order flow providers who are members or member organizations, who submit, as agent, customer orders to the Exchange or non-members or non-member organizations who submit, as agent, Customer orders to the Exchange through a member or member organization that is acting as agent for those Customer orders. Specialists and Directed ROTs who participate in the Exchange's payment for order flow program are assessed a Payment for Order Flow Fee, in addition to ROTs. Therefore, the Payment for Order Flow Fee is assessed, in effect, on equity option transactions between a Customer and an ROT, a Customer and a Directed ROT, or a Customer and a Specialist. A ROT, as defined in Exchange Rule 1014(b), is a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014(b)(i) and (ii).

<sup>28</sup> See Sections VI, A and B of the Pricing Schedule.

<sup>29</sup> See Section VII, B of the Pricing Schedule.

<sup>30</sup> See Section VII, A of the Pricing Schedule.

<sup>31</sup> Market Makers and Specialists incur costs related to obtaining data such as TOPO and also increased co-location fees related to a higher volume of message traffic needed to support their regulatory quoting obligations to the market. With respect to TOPO, in order to gain access to additional information helpful in auctions, Market Makers may for example subscribe to TOPO to obtain information that is valuable to them to assist them in successfully making continuous markets as compared to other market participants who do not have similar obligations.

<sup>32</sup> See Monthly Firm Fee Cap and proposed Electronic Firm Fee Discount in Section II of the Pricing Schedule.

<sup>33</sup> CBOE currently assesses a Clearing Trading Permit Holder Proprietary an equity options fee of \$.20 per contract and a Broker-Dealer electronic order an equity options fee of \$.45 per contract. See CBOE's Fees Schedule. Similarly, ISE assesses a Firm Proprietary execution fee of \$.20 per contract/

### 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>34</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-2012-77 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-2012-77. 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-2012-77 and should be submitted on or before July 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-14768 Filed 6-15-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67183; File No. SR-NYSEArca-2012-55]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the STAR™ Global Buy-Write ETF Under NYSE Arca Equities Rule 8.600

June 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on May 31, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 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 list and trade the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): STAR™ Global Buy-Write ETF. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 parts 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 to list and trade shares ("Shares") of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares:<sup>3</sup> STAR™ Global Buy-Write ETF ("Fund").<sup>4</sup> The Shares will be offered by AdvisorShares Trust ("Trust"), a statutory trust organized

<sup>3</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

<sup>4</sup> The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Exchange-Traded Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25). The Commission also previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.*, Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving listing and trading of five fixed income funds of the PIMCO ETF Trust); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving listing and trading of Cambria Global Tactical ETF); 63329 (November 17, 2010), 75 FR 71760 (November 24, 2010) (SR-NYSEArca-2010-86) (order approving listing and trading of Peritus High Yield ETF).

<sup>35</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>34</sup> 15 U.S.C. 78s(b)(3)(A)(ii).