

### III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>12</sup> because expanding the list of DMM obligations that are subject to the Minor Rule Violation Plan should afford the Exchange increased flexibility in carrying out its supervisory responsibilities, and, in doing so, help to meet the aim of protecting investors and the public interest.

The Commission also believes that the proposed rule change is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,<sup>13</sup> which require that an exchange enforce compliance with, and have rules that provide appropriate discipline for violations of, the Act, the rules and regulations thereunder, and Exchange rules. As an initial matter, the proposed rule change will further these objectives through its clarification of the list of Exchange rule violations that are subject to NYSE Rule 476A by updating rule titles and rule references, deleting references to rules that have been deleted, updating descriptions of rules that have been amended, and fixing a typographical error.

Further, the Commission recognizes that the proposed rule change will render violations of DMM obligations under Rule 104<sup>14</sup> and Rule 123D that were not previously on the Rule 476A List as now eligible for treatment as minor violations. However, the Commission notes that designating a rule as subject to the Minor Rule Violation Plan does not signify that violation of the rule will always be deemed a minor violation. As noted by the Exchange, Rule 476A preserves the Exchange's discretion to seek formal discipline, as warranted, when transgressions of rules designated as eligible for the Minor Rule Violation Plan are found to be more serious. Thus, the Exchange will remain able to require, on a case-by-case basis, formal disciplinary action for any particular violation. Therefore, the Commission believes that the proposed rule change will not compromise the Exchange's

<sup>11</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78f(b)(1) and 15 U.S.C. 78f(b)(6).

<sup>14</sup> The Commission believes that it is appropriate to include in NYSE Rule 476A references to rules that are currently operating on a pilot basis.

ability to seek more stringent sanctions for the more serious violations of Rules 104 and 123D.

In addition, because NYSE Rule 476A provides procedural rights to a person fined under the rule, entitling the person to contest the fine and receive a full disciplinary proceeding,<sup>15</sup> the Commission believes that NYSE Rule 476A, as amended by this proposed rule change, will provide a fair procedure for the disciplining of Exchange members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.<sup>16</sup>

Finally, the Commission finds that the proposed rule change is consistent with the public interest, the protection of investors, or is otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,<sup>17</sup> which governs minor rule violation plans. The Commission believes that the proposed changes to NYSE Rule 476A will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization, in cases where full disciplinary proceedings are unsuitable in view of the nature of a particular violation.

In approving this proposed rule change, the Commission emphasizes that in no way should the amendment of the rule be seen as minimizing the importance of compliance with NYSE rules and all other rules subject to the imposition of fines under NYSE Rule 476A. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, NYSE Rule 476A provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, of whether a violation requires formal disciplinary action under Rule 476.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-NYSE-2012-05) be, and hereby is, approved.

<sup>15</sup> See NYSE Rule 476A(d).

<sup>16</sup> 15 U.S.C. 78f(b)(7) and 15 U.S.C. 78f(d)(1).

<sup>17</sup> 17 CFR 240.19d-1(c)(2).

<sup>18</sup> 15 U.S.C. 78s(b)(2).

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66757; File No. SR-Phlx-2012-45]

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

April 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 2, 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<sup>3</sup> of its Pricing Schedule to further incentivize market participants to transact SPDR S&P 500 ("SPY")<sup>4</sup> options.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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

<sup>19</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).

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

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

<sup>3</sup> Section I of the Exchange's Pricing Schedule is entitled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols."

<sup>4</sup> SPY is one of the Select Symbols subject to the rebates and fees in Section I. A complete list of Select Symbols is included in Section I of the Pricing Schedule.

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 Exchange proposes to further incentivize Customers who transact Complex Orders in SPY. The Exchange currently pays a Customer Complex Order Rebate for Adding Liquidity of \$0.32 per contract and a Customer Complex Order Rebate for Removing Liquidity of \$0.06 per contract. The Exchange is proposing to amend Section I of the Pricing Schedule to specify that the Exchange will increase the Customer Complex Order Rebates for Adding and Removing Liquidity by \$0.01 per contract for transactions in SPY. Therefore, Customer Complex Orders that add liquidity in SPY will receive a rebate of \$0.33 per contract and Customer Complex Orders that remove liquidity in SPY will receive a rebate of \$0.07 per contract.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange's proposal to further incentivize Customers who transact Complex Orders in SPY is reasonable because Customer Complex Orders are becoming an increasingly important segment of options trading. The Exchange believes that it is reasonable to further incentivize Customer Complex Orders by offering a \$0.01 per contract incentive for SPY options in addition to the Customer Complex Order Rebates for Adding and Removing Liquidity because the Exchange seeks to incentivize market participants to direct and transact a greater number of Customer Complex Orders at the Exchange, particularly in SPY. Creating these incentives and attracting Customer Complex Orders to the Exchange, in

turn, benefits all market participants through increased liquidity at the Exchange. The Exchange's proposal to further incentivize Customers who transact Complex Orders in SPY is equitable and not unfairly discriminatory because the Exchange will uniformly pay an additional \$0.01 per contract incentive in addition to the Customer Complex Order Rebates for Adding and Removing Liquidity to all Customer Complex Orders in SPY that receive the rebates.

Further, the Exchange also believes it is reasonable, equitable and not unfairly discriminatory to only offer rebates to Customers and not other market participants because Customer Complex Order flow brings unique benefits to the marketplace in terms of liquidity and order interaction. It is an important Exchange function to provide an opportunity to all market participants to trade against Customer Complex Orders.

In addition, the Exchange believes that paying an additional \$0.01 per contract incentive in addition to the Customer Complex Order Rebates for Adding and Removing Liquidity in SPY, as compared to other option symbols, is reasonable, equitable and not unfairly discriminatory because any market participant is able to transact a Customer Complex Order in SPY and receive the additional rebate incentive regardless of volume. There is no requirement to transact a certain volume of Customer Complex Orders to qualify for the additional \$0.01 per contract rebate incentive. Further, options overlying SPY are the most actively traded equity and ETF option in the United States (U.S.), accounting for more than 15% of the total volume on any given day.<sup>7</sup> Because of the substantial volume opportunity, the Exchange believes this additional \$0.01 per contract incentive for SPY, as compared to other symbols, would continue to attract volume to the Exchange and benefit all market participants.

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 levels at a particular venue to be excessive. Accordingly, the rebates paid by the Exchange must remain competitive with rebates offered 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.

**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
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2012-45 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-2012-45. This file number should be included on the subject line if email is used. To help the Commission process and review your

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

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

<sup>7</sup> For March 2012, SPY options accounted for 17.21% of the total listed equity and ETF options volume traded in the U.S.

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

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 a.m. and 3 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-2012-45 and should be submitted on or before May 3, 2012.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66756; File No. SR-Phlx-2012-43]

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

April 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 28, 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 Pricing Schedule entitled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols," specifically to remove various Select Symbols.<sup>3</sup>

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 2, 2012.

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

##### 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 Pricing 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 Pricing Schedule at Section I, "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 in Section I of the Pricing Schedule: Apple Inc. ("AAPL"); Citigroup, Inc. ("C"); JP Morgan Chase & Co. ("JPM"); Amazon.com, Inc. ("AMZN"); AT&T Inc. ("T"), Caterpillar, Inc. ("CAT"); Exxon Mobil Corporation Common ("XOM"); International Business Machines ("IBM"); and American Express Company Common ("AXP") (collectively "Proposed Deleted Symbols"). These Proposed Deleted Symbols would be subject to the rebates and fees in Section II of the Pricing Schedule entitled "Equity Options Fees."<sup>4</sup>

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 2, 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>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to remove the Proposed 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 Pricing Schedule to the Proposed Deleted Symbols, including the opportunity to receive payment for order flow, will attract order flow to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to remove the Proposed 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 Pricing Schedule, which would not include the Proposed Deleted Symbols. Also, all market participants would be uniformly subject to the fees in Section II, which would include the Proposed Deleted Symbols.

<sup>4</sup> Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are Multiply Listed.

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

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

<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.

<sup>3</sup> 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 Pricing Schedule.