

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Kevin M. O'Neill,**

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67440; File No. SR-CBOE-2012-062]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

July 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 2, 2012, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "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 its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to raise from \$0.25 per contract to \$0.30 per contract the fee for electronic executions by voluntary professionals and professionals in equity options and index, ETF, ETN and HOLDRs options (excluding OEX, XEO, SPXW and Volatility Indexes) classes. The Exchange also proposes to raise from \$0.45 per contract to \$0.60 per contract the fee for electronic executions by broker-dealers in non-Penny Pilot equity options and index, ETF, ETN and HOLDRs options (excluding OEX, XEO, SPXW and Volatility Indexes) classes. Transactions executed as Qualified Contingent Cross ("QCC") trades or transactions executed through the Exchange's Automated Improvement Mechanism ("AIM") when the professional, voluntary professional or broker-dealer is on the Agency/Primary side are excepted from these changes.

These changes are proposed to better reflect the costs associated with supporting a larger number of option classes, option series, and overall transaction volumes that have grown over time which has caused the Exchange to continually invest in software, hardware and personnel, including increased costs for network infrastructure and regulatory systems. The Exchange also believes that increasing the broker-dealer fees for electronic executions by broker-dealers in non-Penny Pilot equity options and index, ETF, ETN and HOLDRs options (excluding OEX, XEO, SPXW and Volatility Indexes) classes will allow the Exchange to compete more effectively by covering these increased costs while still subsidizing lower customer fees. The amounts of these new fees are in line with those assessed by other exchanges. NASDAQ OMX PHLX LLC ("Phlx") assesses to broker-dealers a fee of \$0.60 per contract for electronic transactions in non-Penny Pilot options on equities, indexes, ETFs, ETNs, and HOLDRs that are multiply-listed.<sup>3</sup> The NASDAQ Options Market ("NOM") assesses to professional customers a Maker fee of \$0.30 per contract and a Taker fee of \$0.50 per contract for electronic transactions.<sup>4</sup>

The proposed changes are to take effect on July 1, 2012.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Increasing fees for electronic executions by voluntary professionals and professionals in equity options and index, ETF, ETN and HOLDRs options (excluding OEX, XEO, SPXW and Volatility Indexes) classes is reasonable because the new proposed fee amounts are in line with comparable fees assessed by other exchanges.<sup>7</sup> Further, this would allow the Exchange to recoup costs associated with the growth in professional and voluntary professional trading volume while continuing to assess such fees at a rate that is lower than fees assessed to broker-dealers for similar transactions.

Increasing fees for electronic executions by professionals and voluntary professionals is equitable and not unfairly discriminatory and [sic] because of the growth in trading volume that requires the Exchange to continually invest in software and hardware (the increase in professional and voluntary professional trading volume is much greater than any increases in trading volume over the same period of time by any other type of Exchange market participant).<sup>8</sup> Further, professionals and voluntary professionals will still be assessed lower fees than broker-dealers for electronic executions in equity options and index, ETF, ETN and HOLDRs options (excluding OEX, XEO, SPXW and Volatility Indexes) classes<sup>9</sup> (broker-dealers, as Trading Permit Holders, have direct access to the Exchange's trade engine, while professionals and voluntary professionals do not). CBOE Market-Makers/DPMs/e-DPMs will be assessed lower fees of \$0.20 per contract

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

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

<sup>7</sup> See NOM Fee Schedule, Section 2(1).

<sup>8</sup> Exchange professional and voluntary professional trading volume has increased from 49,313 contract sides in February 2009 to 3,946,055 contract sides in May 2012.

<sup>9</sup> See CBOE Fees Schedule, Section 1, which shows that broker-dealers are assessed \$0.45 per contract for Penny Pilot transactions and, following the submission of this proposed rule change, \$0.60 per contract for non-Penny Pilot transactions.

<sup>22</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> See Phlx Fee Schedule, Section II.

<sup>4</sup> See NOM Fee Schedule, Section 2(1).

for electronic executions in equity options and index, ETF, ETN and HOLDERS options (excluding OEX, XEO, SPXW and Volatility Indexes) classes than similar transactions by voluntary professionals and professionals because CBOE Market-Makers/DPMs/e-DPMs have burdensome quoting obligations which professionals and voluntary professionals do not have. Customers are assessed lower fees (and in the case of equity options, no fees)<sup>10</sup> for electronic executions in equity options and index, ETF, ETN and HOLDERS options (excluding OEX, XEO, SPXW and Volatility Indexes) classes than similar transactions by voluntary professionals and professionals because customer order flow brings liquidity to the market, which in turn benefits all market participants. Clearing Trading Permit Holder Proprietary orders are assessed lower fees for electronic executions in equity options and index, ETF, ETN and HOLDERS options (excluding OEX, XEO, SPXW and Volatility Indexes) classes than similar transactions by voluntary professionals and professionals<sup>11</sup> because Clearing Trading Permit Holders have higher capital requirements, must clear trades for other market participants, must be members of the Options Clearing Corporation, and must back up the trades of the market participants that trade through them, obligations that professionals and voluntary professionals do not have.

Limiting this increase in professional and voluntary professional fees to electronic trading is equitable and not unfairly discriminatory because electronic trading by professionals and voluntary professionals (greater than 99% of all trading by professionals and voluntary professionals on CBOE is done electronically) has caused the increased investment in software and hardware, and therefore professionals and voluntary professionals who are trading electronically should bear the costs related to that increased investment.

The increased fee for electronic executions by broker-dealers in non-Penny Pilot equity options and index, ETF, ETN and HOLDERS options (excluding OEX, XEO, SPXW and Volatility Indexes) classes is reasonable because the amount is equal to that assessed by other exchanges,<sup>12</sup> and because such increased fees will allow the Exchange to recoup the aforementioned costs while also continuing to subsidize lower fees for

customer transactions in order to compete more effectively.

The Exchange's proposal to increase the fee for electronic executions by broker-dealers in non-Penny Pilot equity options and index, ETF, ETN and HOLDERS options (excluding OEX, XEO, SPXW and Volatility Indexes) classes is equitable and not unfairly discriminatory because, currently, broker-dealers are assessed higher fees as compared to customers, professionals, voluntary professionals, CBOE Market-Makers/DPMs/e-DPMs, and Clearing Trading Permit Holders (proprietary). Customers are assessed lower fees (and in the case of equity options, no fees) for electronic executions in non-Penny Pilot equity options and index, ETF, ETN and HOLDERS options (excluding OEX, XEO, SPXW and Volatility Indexes) classes because customer order flow brings liquidity to the market, which, in turn, benefits all market participants. CBOE Market-Makers/DPMs/e-DPMs are assessed lower fees for electronic executions in non-Penny Pilot equity options and index, ETF, ETN and HOLDERS options (excluding OEX, XEO, SPXW and Volatility Indexes) classes than broker-dealers because Market-Makers/DPMs/e-DPMs have burdensome quoting obligations which broker-dealers do not have. Further, Market-Makers/DPMs/e-DPMs pay a \$0.65 per contract Marketing Fee for many non-Penny Pilot transactions, which broker-dealers do not pay.<sup>13</sup> This increased fee for non-Penny Pilot broker-dealer transactions brings broker-dealer fees for such transactions into a closer alignment with the fees paid by Market-Makers/DPMs/e-DPMs.

Professionals and voluntary professionals are assessed lower fees for electronic executions in non-Penny Pilot equity options and index, ETF, ETN and HOLDERS options (excluding OEX, XEO, SPXW and Volatility Indexes) classes than broker-dealers because broker-dealers, as Trading Permit Holders, have direct access to the Exchange's trade engine, while professionals and voluntary professionals do not. Clearing Trading Permit Holder proprietary orders are assessed lower fees for electronic executions in non-Penny Pilot equity options and index, ETF, ETN and HOLDERS options (excluding OEX, XEO, SPXW and Volatility Indexes) classes than broker-dealer orders because Clearing Trading Permit Holders have higher capital requirements, must clear trades for other market participants, must be members of the Options

Clearing Corporation, and must back up the trades of the market participants that trade through them, obligations that broker-dealers do not have.

Assessing higher fees for broker-dealer transactions in electronic, non-Penny Pilot classes is equitable and not unfairly discriminatory because in non-Penny Pilot classes the spreads are naturally larger than in Penny Pilot classes, and these wider spreads allow for greater profit potential. Limiting this fee increase to electronic transactions is equitable and not unfairly discriminatory because electronic trading requires constant system development and maintenance.

Finally, the Exchange believes that increasing the fee for electronic executions by broker-dealers in non-Penny Pilot equity options and index, ETF, ETN and HOLDERS options (excluding OEX, XEO, SPXW and Volatility Indexes) classes is equitable and not unfairly discriminatory because this will allow the Exchange to compete more effectively by covering the increased costs for software, hardware and personnel, including increased costs for network infrastructure and regulatory systems, while still subsidizing lower customer fees, thereby attracting customer order flow, which benefits all market participants.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is 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*

The Exchange neither solicited nor received comments on the proposed rule change.

### **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)<sup>14</sup> of the Act and paragraph (f) of Rule 19b-4<sup>15</sup> thereunder. 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,

<sup>10</sup> See CBOE Fees Schedule, Section 1.

<sup>11</sup> See CBOE Fees Schedule, Section 1.

<sup>12</sup> See Note 1.

<sup>13</sup> See CBOE Fees Schedule, Section 2.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f).

or otherwise in furtherance of the purposes of the Act.

#### 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-CBOE-2012-062 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-CBOE-2012-062. 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-CBOE-2012-062 and should be submitted on or before August 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67439; File No. SR-Phlx-2012-90]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Pricing in Select Symbols and Multiply-Listed Options

July 13, 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 July 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 the Select Symbols<sup>3</sup> and fees in Section I and amend a fee and adopt a Customer Rebate Program in Section II of the Pricing Schedule. The Exchange also proposes to make a minor amendment to Section I.

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.

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

##### 1. Purpose

The Exchange proposes to make various amendments to Section I of the Pricing Schedule entitled "Fees and Rebates for Adding and Removing Liquidity in Select Symbols." The Exchange proposes to delete the following Select Symbols from the list of symbols subject to the fees and rebates in Section I: Barrick Gold Corporation ("ABX"), eBay Inc. ("EBAY"), Corning Inc. ("GLW"), Procter & Gamble Co. ("PG"), Potash Corp. of Saskatchewan, Inc. ("POT"), Starbucks Corporation ("SBUX"), SanDisk Corp. ("SNDK") and United Continental Holdings, Inc. ("UAL") (collectively "Proposed Deleted Symbols"). These Proposed Deleted Symbols would be subject to the rebates and fees in Section II of the Pricing Schedule entitled "Multiply Listed Options Fees."<sup>4</sup>

The Exchange proposes to amend the title of Section I, Part A from "Single contra-side" to "Simple Order." The Exchange believes this amendment better describes the type of orders subject to the fees and rebates in Section I, Part A of the Pricing Schedule. The Exchange also proposes to increase the Specialist<sup>5</sup> and Market Maker<sup>6</sup> Fees for Removing Liquidity in Section I, Part A from \$0.38 per contract to \$0.39 per contract. The Exchange believes that the increased fees better align the Fees for Removing Liquidity by assessing Customers the same fee as a Specialist and Market Maker.

The Exchange proposes to amend the Electronic Firm Fee Discount which

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

<sup>5</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

<sup>6</sup> For purposes of the Pricing Schedule, the term "Market Maker" is utilized to describe fees and rebates applicable to ROTs, SQTs and RSQTs. The term "ROT, SQT and RSQT" applies to transactions for the accounts of Registered Option Traders ("ROT's"), Streaming Quote Traders ("SQT's"), and Remote Streaming Quote Traders ("RSQT's").

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

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

<sup>3</sup> The Select Symbols are subject to the fees and rebates in Section I of the Pricing Schedule. See Section I for a complete list of Select Symbols.

<sup>16</sup> 17 CFR 200.30-3(a)(12).