

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BYX-2012-011 and should be submitted on or before July 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67283; File No. SR-NYSEArca-2012-64]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of a Security

June 27, 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 June 15, 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 and II below, which Items have been prepared by the self-regulatory organization. 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 option contracts overlying 10 shares of a security ("mini-options contracts"). 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 is proposing to list and trade mini-options contracts and implement rule text necessary to integrate mini-options contracts with contracts overlying 100 shares ("standard contracts"). Whereas standard contracts represent a deliverable of 100 shares of an underlying security, mini-options

contracts would represent a deliverable of 10 shares. The Exchange proposes to initially list and trade mini-options contracts overlying 5 high priced securities for which the standard contract overlying the same security exhibits significant liquidity.<sup>3</sup> The Exchange believes that investors would benefit from the availability of mini-options contracts by making options overlying high priced securities more readily available as an investing tool and at more affordable and realistic prices, most notably for the average retail investor.

For example, with Apple Inc. ("AAPL") trading at \$605.85 on March 21, 2012, (\$60,585 for 100 shares underlying a standard contract), the 605 level call expiring on March 23 is trading at \$7.65. The cost of the standard contract overlying 100 shares would be \$765, which is substantially higher in notional terms than the average equity option price of \$250.89.<sup>4</sup> Proportionately equivalent mini-options contracts on AAPL would provide investors with the ability to manage and hedge their portfolio risk on their underlying investment, at a price of \$76.50 per contract. In addition, investors who hold a position in AAPL at less than the round lot size would still be able to avail themselves of options to manage their portfolio risk. For example, the holder of 50 shares of AAPL could write covered calls for five mini-options contracts. The table below demonstrates the proposed differences between a mini-options contracts [sic] and a standard contract with a strike price of \$125 per share and a bid or offer of \$3.20 per share:

	Standard	Mini
Share Deliverable Upon Exercise .....	100 shares .....	10 shares.
Strike Price .....	125 .....	125.
Bid/Offer .....	3.20 .....	3.20.
Premium Multiplier .....	\$100 .....	\$10.
Total Value of Deliverable .....	\$12,500 .....	\$1,250.
Total Value of Contract .....	\$320 .....	\$32.

The Exchange notes that the Commission has approved an earlier proposal of NYSE Arca to list and trade option contracts overlying a number of

shares other than 100.<sup>5</sup> Moreover, the concept of listing and trading parallel options products of reduced values and sizes on the same underlying security is

not novel. For example, parallel product pairs on a full-value and reduced-value basis are currently listed on the S&P 500 Index ("SPX" and "XSP," respectively),

<sup>28</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 Exchange proposes that mini-options contracts would be listed in only five issues, specifically SPDR S&P 500 (SPY), Apple, Inc. (AAPL), SPDR Gold Trust (GLD), Google Inc. (GOOG), and Amazon.com Inc. (AMZN). These issues were selected because they are priced greater

than \$100 and are among the most actively traded issues, in that the standard contract exhibits average daily volume ("ADV") over the previous three calendar months of at least 45,000 contracts, excluding LEAPS and FLEX series. The Exchange notes that any expansion of the program would require that a subsequent proposed rule change be submitted with the Commission.

<sup>4</sup> A high priced underlying security may have relatively expensive options, because a low

percentage move in the share price may mean a large movement in the options in terms of absolute dollars. Average non-FLEX equity option premium per contract January 1–December 31, 2011. See <http://www.theocc.com/webapps/monthly-volume-reports?reportClass=equity>.

<sup>5</sup> See Securities Exchange Act Release No. 44025 (February 28, 2001), 66 FR 13986 (March 8, 2001) (approving SR-PCX-01-12).

the Nasdaq 100 Index ("NDX" and "MNX," respectively) and the Russell 2000 Index ("RUT" and "RMN," respectively).

The Exchange believes that the proposal to list and trade mini-options contracts will not lead to investor confusion. There are two important distinctions between mini options and standard options that are designed to ease the likelihood of any investor confusion. First, the premium multiplier for the proposed mini options will be 10, rather than 100, to reflect the smaller unit of trading. To reflect this change, the Exchange proposes to add Rule 6.71(c) which notes that bids and offers for an option contract overlying 10 shares will be expressed in terms of dollars per 1/10th part of the total value of the contract. Thus, an offer of ".50" shall represent an offer \$5.00 on an options contract having a unit of trading consisting of 10 shares. Additionally, the Exchange will designate mini-options contracts with different trading symbols than their related standard contract.<sup>6</sup> The Exchange believes that the clarity of this approach is appropriate and transparent, as supported by the recent Options Clearing Corporation ("OCC") filing to amend its bylaws to accommodate such strike prices and premiums.<sup>7</sup> Moreover, the Exchange believes that the terms of mini-options contracts are consistent with the terms of the Options Disclosure Document.

The Exchange recognizes the need to differentiate mini-options contracts from standard options and therefore is proposing the following changes to its rules.

The Exchange proposes to add Commentary .01 to Rule 6.3 (Option Contracts to Be Traded) to reflect that, in addition to option contracts with a unit of trading of 100, the Exchange may list option contracts overlying 10 shares of SPDR S&P 500 (SPY), Apple, Inc. (AAPL), SPDR Gold Trust (GLD), Google Inc. (GOOG), and Amazon.com Inc. (AMZN) for all expirations applicable to 100 share options in each class. The Exchange believes that these five securities are appropriate because they are high priced securities for which there is already significant options liquidity and therefore significant customer demand.

The Exchange also proposes to add Commentary .14 to Rule 6.4 (Series of

Options Open for Trading) to list series of mini-options provided that the underlying security has been designated as eligible under Rule 6.3 Commentary .01. Also, the Exchange proposes to not permit the listing of additional mini-options series if the underlying is trading at \$90 or less to limit the number of strikes once the underlying is no longer a high priced security. The Exchange proposes a \$90.01 minimum for continued qualification so that additional mini-options strikes may be added even though the underlying has fallen slightly below the initial qualification standard. In addition, the underlying security must be trading above \$90 for five consecutive days before the listing of mini-option contracts in a new expiration month. This restriction will allow the Exchange to list mini-option strikes without disruption when a new expiration month is added even if the underlying has had a minor decline in price.

The Exchange also proposes to add Commentary .08 to Rule 6.8 (Position Limits) to reflect that, for purposes of compliance with the Position Limits of Rules [sic] 6.8, ten mini-options contracts will equal one standard contract overlying 100 shares.

The Exchange also proposes to add subsection (c) to Rule 6.71 (Meaning of Premium Bids and Offers) to extend the explanation of bids and offers with respect to mini-options contracts and also remove references to Exchange-Traded Fund Shares, because other types of underlying securities have options traded on them.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of mini-options contracts. The Exchange has further discussed the proposed listing and trading of mini-options contracts with the OCC, which has represented that it is able to accommodate the proposal.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),<sup>9</sup> in particular, because it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect

the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that investors would benefit from the availability of mini-options contracts by making options on high priced securities more readily available as an investing tool and at more affordable and realistic prices, most notably for the average retail investor. As described above, the proposal contains a number of features designed to protect investors by reducing investor confusion, such as the mini-options contracts being designated by different trading symbols from their related standard contracts.<sup>10</sup> Moreover, the proposal is designed to protect investors and the public interest by providing investors with an enhanced tool to reduce risk in high priced securities. In particular, the proposed contracts will provide retail customers who invest in high priced issues in lots of less than 100 shares with a means of protecting their investments that is presently only available to those who have positions of 100 shares or more. Further, the proposal currently is limited to five high priced securities for which there is already significant options liquidity, and therefore significant customer demand and trading volume.

## 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 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

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

<sup>6</sup> OCC Symbolology is structured for contracts with other than 100 shares to be designated with a numerical suffix to the standard trading symbol, i.e., AAPL8.

<sup>7</sup> See Securities Exchange Act Release No. 61485 (February 3, 2010), 75 FR 6750 (February 10, 2010) (SR-OCC-2010-01).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See *supra* note 6.

(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-2012-64 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-2012-64. 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-NYSEArca-2012-64 and should be submitted on or before July 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67271; File No. SR-Phlx-2012-85]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Its Excess Order Fee

June 27, 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 June 25, 2012, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II 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 the Substance of the Proposed Rule Change

Phlx proposes to institute an Excess Order Fee. [sic] Phlx will implement the proposed change on July 2, 2012. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/>, at Phlx's principal office, 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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

<sup>11</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.

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

#### 1. Purpose

Phlx recently submitted a proposed rule change to introduce an Excess Order Fee,<sup>3</sup> aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on Phlx's NASDAQ OMX PSX system ("PSX") and the member organizations that trade on it and that may negatively impact the usefulness and life cycle cost of market data. The fee is scheduled to be implemented on July 2, 2012. In general, the determination of whether to impose the fee on a particular market participant identifier ("MPID") is made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the national best bid or offer ("NBBO"), and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs that have an "Order Entry Ratio" of more than 100.

Through this proposed rule change, the Exchange is modifying the parameters of the fee slightly to provide that all calculations under the rule establishing the fee will be based on orders received by PSX during regular market hours (generally, 9:30 a.m. to 4:00 p.m.)<sup>4</sup> and will exclude orders received at other times, even if they execute during regular market hours. Phlx is making the change because the concerns about inefficient order entry practices that have prompted the fee are generally not present with regard to trading activity outside of regular market hours, when volumes are light. Phlx is also concerned that lower execution rates outside of regular market hours may skew calculations under the rule, such that an MPID that is considered acceptably efficient during regular market hours would be required to pay a fee under the rule due to its activity outside of regular market hours.

#### 2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable

<sup>3</sup> Securities Exchange Act Release No. 67004 (May 17, 2012), 77 FR 30581 (May 23, 2012) (SR-Phlx-2012-64).

<sup>4</sup> Regular market hours may be different in some circumstances, such as on the day after Thanksgiving, when regular market hours on all exchanges traditionally end at 1:00 p.m.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).