

shall provide a clear and conspicuous disclosure to such consumer of such financial institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties ("privacy notice"). Title V of the GLBA also provides that, unless an exception applies, a financial institution may not disclose nonpublic personal information of a consumer to a nonaffiliated third party unless the financial institution clearly and conspicuously discloses to the consumer that such information may be disclosed to such third party; the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and the consumer is given an explanation of how the consumer can exercise that nondisclosure option ("opt out notice"). The Rule applies to broker-dealers, investment advisers registered with the Commission, and investment companies ("covered entities").

Commission staff estimates that, as of early May, 2012, the Rule's information collection burden applies to approximately 21,500 covered entities (approximately 4,700 broker-dealers, 12,600 investment advisers registered with the Commission, and 4,200 investment companies). In view of (a) the minimal recordkeeping burden imposed by the Rule (since the Rule has no recordkeeping requirement and records relating to customer communications already must be made and retained pursuant to other SEC rules); (b) the summary fashion in which information must be provided to customers in the privacy and opt out notices required by the Rule (the model privacy form adopted by the SEC and the other agencies in 2009, designed to serve as both a privacy notice and an opt out notice, is only two pages); (c) the availability to covered entities of the model privacy form and online model privacy form builder; and (d) the experience of covered entities' staff with the notices, SEC staff estimates that covered entities will each spend an average of approximately 12 hours per year complying with the Rule, for a total of approximately 258,000 annual burden-hours ( $12 \times 21,500 = 258,000$ ). SEC staff understands that the vast majority of covered entities deliver their privacy and opt out notices with other communications such as account opening documents and account statements. Because the other communications are already delivered to consumers, adding a brief privacy and opt out notice should not result in added costs for processing or for postage

and materials. Also, privacy and opt out notices may be delivered electronically to consumers who have agreed to electronic communications, which further reduces the costs of delivery. Because SEC staff assumes that most paper copies of privacy and opt out notices are combined with other required mailings, the burden-hour estimates above are based on resources required to integrate the privacy and opt out notices into another mailing, rather than on the resources required to create and send a separate mailing. SEC staff estimates that, of the estimated 12 annual burden-hours incurred, approximately 8 hours would be spent by administrative assistants at an hourly rate of \$65, and approximately 4 hours would be spent by internal counsel at an hourly rate of \$378, for a total annualized cost of \$2,032 for each of the covered entities ( $8 \times \$65 = \$520$ ;  $4 \times \$378 = \$1,512$ ;  $\$520 + \$1,512 = \$2,032$ ). Hourly cost estimates for personnel time are derived from the Securities Industry and Financial Markets Association's Management & Professional Earnings in the Securities Industry 2011, modified by SEC staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. Accordingly, SEC staff estimates that the total annualized cost for the estimated total hour burden for the approximately 21,500 covered entities subject to the Rule is approximately \$43,688,000 ( $\$2,032 \times 21,500 = \$43,688,000$ ).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information on respondents; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Background documentation for this information collection may be viewed at the following Web site: [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: September 4, 2012.

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67776; File No. SR-Phlx-2012-110]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Elimination of a Reversal and Conversion Fee Cap

September 4, 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 August 24, 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 remove a fee cap on equity options transactions on certain reversals and conversion strategies.

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

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

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

principal office of the Exchange, on the Commission's Web site at <http://www.sec.gov>, 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 remove a fee cap on equity options transactions on certain reversals and conversion strategies. The fee cap was intended to incentivize market participants by capping option transaction fees related to reversal and conversion strategies to encourage trading on the Exchange and the Exchange believes such a fee cap is no longer necessary. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions are established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration.

The Exchange proposes to eliminate this cap for all market participants relating to option transaction fees in Multiply Listed Options (Section II of the Pricing Schedule) of \$500 per day for reversal and conversion strategies executed on the same trading day in the same options class ("Reversal and Conversion Cap"). The Reversal and Conversion Cap applies only to executions occurring on either of the two days preceding the standard options expiration date, which typically was the third Thursday and Friday of every month.

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>3</sup> in general, and furthers the

objectives of Section 6(b)(4) of the Act<sup>4</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed elimination of the Reversal and Conversion Cap is reasonable because the Exchange previously capped the option transaction fees in Multiply Listed options for reversals and conversions in an effort to incentivize market participants, but the Exchange believes such an incentive is no longer necessary. The Exchange also believes that this proposal is equitable and not unfairly discriminatory because the Exchange is eliminating the Reversal and Conversion Cap for all members and the Exchange believes that market participants will continue to transact in Multiply Listed options for reversals and conversions.

### 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>5</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-2012-110 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-2012-110. 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 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-2012-110 and should be submitted on or before October 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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<sup>3</sup> 15 U.S.C. 78f(b).

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 200.30-3(a)(12).