

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64305; File No. SR-Phlx-2011-51)

April 18, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Alpha Index Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on April 14, 2011, 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 its Fee Schedule to create fees for options overlying NASDAQ OMX Alpha IndexesSM ("Alpha Indexes").³

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 18, 2011.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Alpha Indexes measure relative total returns of one stock and one exchange-traded fund share ("ETF") underlying options which are also traded on the Exchange (each such combination of two components is referred to as an "Alpha Pair"). The first component identified in an Alpha Pair (the "Target Component") is measured against the second component identified in the Alpha Pair (the "Benchmark Component"). Alpha Index Options contracts will be exercised European-style and settled in U.S. dollars. See Securities Exchange Act Release No. 63860 (February 7, 2011), 76 FR 7888 (February 11, 2011) (SR-Phlx-2010-176).

The text of the proposed rule change is available on the Exchange's website 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to create new fees titled "Alpha Index Options" to support options overlying certain NASDAQ OMX Alpha IndexesTM ("Alpha Indexes") as well as offer discounted pricing to encourage members and member organizations to trade options overlying Alpha Indexes.⁴

⁴ Options on the Alpha Indexes will be available for trading on the Exchange on April 18, 2011. The Exchange will list and trade Alpha Index options only on the following Alpha Pairs: AAPL/SPY, AMZN/SPY, CSCO/SPY, F/SPY, GE/SPY, GOOG/SPY, HPQ/SPY, IBM/SPY, INTC/SPY, KO/SPY, MRK/SPY, MSFT/SPY, ORCL/SPY, PFE/SPY, RIMM/SPY, T/SPY, TGT/SPY, VZ/SPY and WMT/SPY. See Securities Exchange Act Release No. 63860 (February 7, 2011), 76 FR 7888 (February 11, 2011) (SR-Phlx-2010-176). The Alpha Pairs are represented by the following symbols: AVSPY, ZVSPY, CVSPY, FVSPY, LVSPY, UVSPY, HVSPY, IVSPY, JVSPY, KVSPY, NVSPY, MVSPY, OVSPY, PVSPY, RVSPY, YVSPY, XVSPY, VVSPY, WVSPY ("Alpha Symbols").

The Alpha Indexes will trade on the Exchange as a Singly Listed Option.⁵ The Exchange proposes to add these fees to Section II of the Fee Schedule titled “Singly Listed Options.”⁶ Specifically, the Exchange is proposing to assess the following fees on options overlying Alpha Indexes:

	Customer	Professional	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer
Alpha Index Options	\$0.15	\$0.20	\$0.00	\$0.20	\$0.20

The proposed fees for Alpha Indexes would apply to Alpha Pairs/Alpha Symbols which have been filed to list and trade on the Exchange.⁷ In addition, Customer executions with average daily volume of 1,000 Customer contracts or more in a calendar month would be assessed \$0.10 per contract. The Exchange believes that this Customer discount should encourage member organizations to offer options on Alpha Indexes to their customers.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 18, 2011.

⁵ A Singly Listed Option means an option that is only listed on the Exchange and is not listed by any other national securities exchange.

⁶ Section III of the Fee Schedule includes options overlying currencies, equities, exchange-traded funds (“ETFs”), exchange-traded notes (“ETNs”), indexes and Holding Company Depository Receipts (“HOLDRS”).

⁷ All other indexes would be assessed the fees in Sections II and III, respectively, depending on whether the index is Singly Listed or Multiply Listed. For purposes of this filing, a Multiply Listed security means an option that is listed on more than one exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act⁹ 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 fees for Alpha Indexes are equitable, reasonable and not unfairly discriminatory because the Exchange is seeking to recoup the operational and development costs associated with the Alpha Indexes product, a proprietary product of the Exchange, while also encouraging members and member organizations to trade Alpha Indexes by assessing lower fees and offering a Customer volume discount.¹⁰ It is also reasonable and equitable to offer Customers a volume discount on trading options overlying Alpha Indexes because Customer order flow will provide increased liquidity to the market and benefit all participants.

The Exchange has previously stated that it incurs higher costs for Singly Listed options as compared to Multiply Listed options.¹¹ The Chicago Board Options Exchange, Incorporated (“CBOE”) noted in a comment letter dated June 21, 2010, that CBOE relies upon fees to recoup licensing costs incurred on options products that use

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ The Exchange incurs costs for maintaining the proprietary index as well as marketing expenses to develop this new product. Also, by way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a Multiply Listed option as compared to a Singly Listed option, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

¹¹ See Securities Exchange Release Act No. 64096 (March 18, 2011), 76 FR 16646 (March 24, 2011) (SR-Phlx-2011-34).

third-party proprietary indexes as benchmarks (such as the S&P 500[®]), and to generate returns on its investments for its own popular proprietary products (such as The CBOE Volatility Index[®] (“VIX[®]”) Options).¹² The Exchange agrees with CBOE’s position and while the Exchange continues to assert that Singly Listed products incur higher costs and therefore market participants should be assessed higher fees as compared to Multiply Listed products, the Exchange is proposing to assess lower fees for the Alpha Indexes, and to offer a Customer volume discount, as a means to promote this new infant index product.¹³

The Exchange believes that the proposed fees for Alpha Indexes are equitable because all market participants would be assessed lower fees for transacting Alpha Indexes as compared to other Singly Listed indexes. Specifically, Customers would be assessed \$0.15 per contract to transact Alpha Indexes as compared to \$0.35 per contract for other Singly Listed index options. Professionals,¹⁴ Firms and Broker-Dealers would be assessed \$0.20 per contract as compared to \$0.45 per contract for all other Singly Listed index options. Specialists,¹⁵ Registered Options Traders,¹⁶ SQTs,¹⁷ and RSQTs¹⁸

¹² See CBOE’s Comment Letter dated June 21, 2010 to the Proposed Amendments to Rule 610 of Regulation NMS, File No. S7-09-10. CBOE further noted that options exchanges expend considerable resources on research and development related to new product offerings and options exchanges incur large licensing costs for many products.

¹³ If the Exchange determines to increase the pricing for options overlying Alpha Indexes at a later date, the Exchange would file a proposal with the Commission.

¹⁴ The Exchange defines a “professional” as 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) (hereinafter “Professional”).

¹⁵ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

(collectively “market makers”)¹⁹ would be assessed no fees for transacting Alpha Indexes as compared to the \$0.35 per contract fee such market makers are assessed for all other Singly Listed index options.

The Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Customers because all market participants benefit from Customer order flow. The Exchange also believes that offering discounted pricing to Customers for transacting 1,000 or more options overlying Alpha Indexes further provides benefits to both Customers and other market participants. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to assess a Professional, Firm and Broker-Dealer a per contract fee of \$0.20 per contract for transacting Alpha Indexes because the Exchange is assessing all market participants, except Customers and market makers, the same rate to transact Alpha Indexes. The Exchange believes that the price differentiation between market makers as compared to Professionals, Firms and Broker-Dealers is

¹⁶ A Registered Options Trader (“ROT”) includes a Streaming Quote Trader (“SQT”), a Remote Streaming Quote Trader (“RSQT”) and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant 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).

¹⁷ An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

¹⁸ A RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

¹⁹ The Exchange market maker category includes Specialists (see Rule 1020) and ROTs (Rule 1014(b)(i) and (ii), which includes SQTs (see Rule 1014(b)(ii)(A)) and RSQTs (see Rule 1014(b)(ii)(B)).

justified and not unfairly discriminatory because market makers have obligations to the market, which do not apply to Firms, Professionals and Broker-Dealers.²⁰ Obligations, such as quoting obligations, are critical to ensure there is sufficient liquidity in new options classes.

The Exchange believes that the proposed fees are reasonable and not unfairly discriminatory because the fees are consistent with price differentiation that exists today at all option exchanges. For example, CBOE assesses different rates for certain proprietary indexes as compared to other index products transacted at CBOE. VIX options and The S&P 500[®] Index options (“SPXSM”) are assessed different fees than other indexes.²¹ In addition, the concept of offering a volume discount to incentivize order flow is not novel.²²

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

²⁰ See Exchange Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

²¹ See CBOE’s Fees Schedule.

²² See CBOE’s Fees Schedule. CBOE has a sliding scale for its proprietary products whereby transaction fees are reduced when a Clearing Trading Permit Holder reaches certain volume thresholds in multiply listed options on CBOE in a month.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²³ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2011-51 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-2011-51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

will post all comments on the Commission's Internet website (<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 website 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-2011-51 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Cathy H. Ahn
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).