

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68582; File No. SR-Phlx-2012-146)

January 4, 2013

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

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 December 21, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend rule text related to fee caps applicable to certain strategies on Multiply Listed Options in Section II, entitled “Equity Options Fees.”³

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqomxphlx.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Section II Equity Options fees include options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

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 correct rule text inadvertently included in a recent proposed rule change related to fee caps on dividend,⁴ merger,⁵ short stock interest⁶ and reversal⁷ and conversion⁸ strategies in order to clarify contradictory language within the rule text.

The Exchange recently filed a rule change which applied fee caps on various strategies in Section II of the Pricing Schedule.⁹

Among other amendments, this rule change increased the cap for dividend, merger and short stock interest strategies from \$1,000 to \$1,250 provided the strategy is executed on the same trading

⁴ A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend.

⁵ A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

⁶ A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

⁷ 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.

⁸ Conversions are established by combining a long position in the underlying stock with a long put and a short call position that share the same strike and expiration.

⁹ See Securities Exchange Act Release No. 68406 (December 11, 2012), 77 FR 74715 (December 17, 2012) (SR-Phlx-2012-138).

day in the same options class when such members are trading in their own proprietary account. Further, the Exchange adopted a cap for floor options transaction charges for reversal and conversion strategies of \$750, provided the reversal and conversion strategy is executed on the same trading day in the same options class when such members are trading in their own proprietary account, similar to dividend, merger and short stock interest strategies.¹⁰

The rule text was amended to state, “Specialist, Market Maker, Professional, Firm and Broker-Dealer floor option transaction charges in Multiply Listed Options will be capped at \$1,250 *per month* for dividend, merger and short stock interest strategies executed on the same trading day in the same options class, and option transaction charges in Multiply Listed Options will be capped at \$750 *per month* for reversal and conversion strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts.” [emphases added] The Exchange noted that the strategies need to be executed on the same trading day. Strategy caps offered by the Exchange are and have always been on a per symbol, per day basis. The insertion of the text “per month” was inadvertent. The Exchange proposes to delete the “per month” text which is inaccurate and contradicts other text which states the strategies need to be executed on the same trading day. The Exchange intended the strategy caps of \$1,250 and \$750 to be per symbol, per day. The Exchange is proposing to remove the text “per month” to correct the Pricing Schedule at Section II and clarify the caps are for the same trading day as specified in the rule text.

¹⁰ The Exchange also increased the cap for floor equity options transaction charges for dividend, merger and short stock interest strategies combined from the greater of \$10,000 per member or \$25,000 per member organization per month to simply \$35,000 per member organization per month provided that such members are trading in their own proprietary account. The Exchange proposed to apply this cap of \$35,000 per member organization per month to reversal and conversion strategies as well and term the cap as the “Monthly Strategy Cap.” See Securities Exchange Act Release No. 68406 (December 11, 2012), 77 FR 74715 (December 17, 2012) (SR-Phlx-2012-138).

The Exchange does not believe that this error caused confusion because the Exchange issued an Options Trader Alert at the time the filing became effective to notify members of the cap. The alert was clear that the caps were per day. In addition, the Exchange has spoken to members and does not believe there is any confusion. The purpose of this filing is to correct the Pricing Schedule by removing the words “per month” to make clear the caps are per day.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² 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 amend the rule text relating to strategies is reasonable because the words “per month” and “on the same trading day” are at odds. The Exchange’s proposal to remove the words “per month” should clarify the application of the fee caps related to strategies.

The Exchange’s proposal to amend the rule text relating to strategies is equitable and not unfairly discriminatory because the Exchange would apply the fee caps in a similar manner to all market participants. All market participants are entitled to the caps on a per day, per symbol basis.

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. The Exchange’s proposal is to correct rule text which contains contradictory language. The

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

Exchange believes this amendment would provide clarity with respect to the application of strategy caps and would benefit market participants. The Exchange does not believe that there is a misunderstanding among market participants that the strategy caps are per day.

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.¹³ 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-2012-146 on the subject line.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2012-146. 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 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 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 offices 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-2012-146, 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).