*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**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) [10] 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, 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.* Please include File Number SR–NASDAQ–2011–147 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–NASDAQ–2011–147. 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 a.m. and 3 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–NASDAQ–2011–147 and should be submitted on or before December 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–65720; File No. SR–Phlx–2011–147]**

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Complex Order Rebates and Fees for Adding and Removing Liquidity**

November 9, 2011.

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 November 1, 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 Complex Order Fees in Section I of its Fee Schedule entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols.''

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 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 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

The purpose of the proposed rule change is to amend Section I, Part B of the Exchange's Fee Schedule for Complex Orders. A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s).[3]

The Exchange is proposing to: (i) Eliminate all references to Designated Options;[4] (ii) amend its Customer Complex Order Rebate for Adding Liquidity for all Select Symbols,[5] which will now include the Designated Options; and (iii) amend its Complex Order Fees for Removing Liquidity for Select Symbols, which will now include the Designated Options.

The Exchange proposes to eliminate the Customer Complex Order Rebate for Adding Liquidity in Designated Options and the Complex Order Fees for Removing Liquidity in Designated Options. Designated Options will be paid the rebates and assessed the fees applicable to Select Symbols. The Exchange initially filed a proposed rule change[6] to pay a different Customer Complex Order Rebate to Add Liquidity and assess different Complex Order Fees for Removing Liquidity for Designated Options as compared to Select Symbols. In that filing, the Exchange noted that it believed that the proposed Complex Order rebate and fees for the Designated Options would attract additional order flow to the Exchange.

At this time, the Exchange is proposing to remove the Complex Order rebate and fees for Designated Options and instead assess those Designated Options the same rates that apply to the Select Symbols. The Exchange is combining Designated Options and Select Symbols into one category. The Exchange is increasing the Customer Complex Order Rebate for Adding Liquidity and also increasing the Fees for Removing Liquidity in the combined category. The Exchange believes that increasing the Complex Order Customer Rebate for Adding Liquidity will further attract additional order flow to the Exchange. The Exchange believes that increasing the Complex Order Fees for Removing Liquidity will assist the Exchange in recouping certain costs associated with its Fees and Rebates for Adding and Removing Liquidity while not impeding the Exchange from continuing to increase its order flow.

Currently, the Exchange pays a Customer Complex Order Rebate for Adding Liquidity in Designated Options of $0.27 per contract. The Exchange proposes to eliminate the Customer Complex Order Rebate for Adding Liquidity in Designated Options and instead apply the Complex Order Rebate for Adding Liquidity in Select Symbols to those symbols by removing the text ''except in Designated Options **'' from the Fee Schedule. The Exchange currently pays a Customer Complex Order Rebate for Adding Liquidity in Select Symbols of $0.24 per contract. The Exchange is proposing to increase that Customer Complex Order Rebate for Adding Liquidity in Select Symbols to $0.30 per contract.

Currently, the Exchange assesses the following Complex Order Fees for Removing Liquidity in Select Symbols and Designated Options, respectively.

| | Customer | Directed participant | Specialist, ROT, SQT and RSQT | Firm | Broker-dealer | Professional |
|---|---|---|---|---|---|---|
| Fee for Removing Liquidity in all Select Symbols except in Designated Options | $0.25 | $0.27 | $0.29 | $0.30 | $0.35 | $0.30 |
| Fee for Removing Liquidity in Designated Options | 0.00 | 0.28 | 0.29 | 0.30 | 0.35 | 0.30 |

The Exchange proposes to amend the Complex Order Fees for Removing Liquidity for all Select Symbols, including the Designated Options, for a Directed Participant,[7] Specialist,[8] ROT,[9] SQT[10] and RSQT,[11] Firm and Professional[12] as follows:

[3] *See* Exchange Rule 1080, Commentary .08(a)(i).

[4] The Exchange defines Designated Options in Section I of its Fee Schedule as the following options: (i) Standard and Poor's Depositary Receipts/SPDRs (''SPY''); (ii) the PowerShares QQQ Trust (''QQQ'')®; (iii) Apple, Inc. (''AAPL''); (iv) iShares Russell 2000 Index (''IWM''); (v) Bank of America Corporation (''BAC''); (vi) Citigroup, Inc. (''C''); (vii) SPDR Gold Trust (''GLD''); (viii) Intel Corporation (''INTC''); (ix) JPMorgan Chase & Co. (''JPM''); (x) iShares Silver Trust (''SLV''); (xi) Financial Select Sector SPDR (''XLF''); and (xii) Ford Motor Company (''F'') (taken together, ''Designated Options'').

[5] All Designated Options are also Select Symbols.

[6] *See* Securities Exchange Act Release No. 65049 (August 5, 2011), 76 FR 49810 (August 11, 2011) (SR–Phlx–2011–103).

[7] The term ''Directed Participant'' applies to transactions for the account of a Specialist, Streaming Quote Trader or Remote Streaming Quote Trader resulting from a Customer order that is (1) Directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

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

[9] A Registered Options Trader (''ROT'') includes a Streaming Quote Trader (''SQT''), a Remote Streaming Quote Trader (''RSQT'') and a Non-SQT, which by definition is neither a SQT nor a RSQT. A Registered Option Trader 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).

[10] 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.

[11] An 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.

[12] The term ''professional'' means 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). *See* Rule 1000(b)(14).

| Customer | Directed participant | Specialist, ROT, SQT and RSQT | Firm | Broker-dealer | Professional |
|---|---|---|---|---|---|
| $0.00 | 0.30 | 0.32 | 0.35 | 0.35 | 0.35 |

Customers and Broker-Dealers would remain at the same rates applicable today for Designated Options. The Exchange proposes to eliminate the Designated Options category by removing the text ''except in Designated Options **'' from the Fee Schedule. The Exchange would also eliminate any other references to Designated Options in Section I of the Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(4) of the Act [14] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange also believes that there is an equitable allocation of reasonable rebates among Exchange members.

The Exchange believes that it is reasonable and equitable to only pay a Complex Order Rebate for Adding Liquidity to Customers, as compared to other market participants, because the Customer rebate will attract Customer order flow to the Exchange for the benefit of all market participants. Likewise, the Exchange believes that it is reasonable to not assess a Complex Order Fee for Removing Liquidity for Customers, because this also will attract Customer order flow to the Exchange which in turn also benefits all market participants.

The Exchange believes that its proposal to eliminate the Designated Options category and pay an increased Customer Complex Order Rebate to Add Liquidity for all Select Symbols, which would now include the Designated Options, is reasonable because this will attract additional order flow to the Exchange. The Exchange also believes that it is equitable and not unfairly discriminatory to pay all Select Symbols, including the Designated Options, a higher Customer Rebate for Adding Liquidity for Complex Orders because all the symbols in Section I will be paid a uniform rebate to transact Customer orders.

The Exchange believes that it is reasonable to assess higher Complex Order Fees for Removing Liquidity for a Directed Participant, Specialist, ROT, SQT and RSQT, Firm and Professional because the rates will remain within the range of fees assessed today for Single contra-side orders.[15] In addition, the Complex Order Fees for Removing Liquidity are within the range of fees at the International Securities Exchange, LLC (''ISE'').[16] The Exchange proposes to increase the Complex Order Fees for Removing Liquidity, but continue to assess market makers [17] lower rates as compared to other market participants because market makers have obligations to the market, which do not apply to Firms, Professionals and Broker-Dealers.[18] Directed Participants are assessed a different Complex Order Fee for Removing Liquidity as compared to other market makers because they have higher quoting obligations as compared to market makers.[19] Firms, Broker-Dealers and Professionals would be assessed equal rates and Customers would not be assessed a fee.[20]

The Exchange believes that it is equitable and not unfairly discriminatory to increase the Complex Order Fees for Removing Liquidity for Select Symbols, including the Designated Options, for all market participants except Customers and Broker-Dealers because these fees would apply uniformly to these market participants.[21] In addition, the Complex Order Fees for Removing Liquidity are comparable to the complex order fees at ISE.[22]

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the Complex Order fees and rebates it pays/assesses must be competitive with fees and rebates in place on other exchanges. The Exchange believes that this competitive marketplace impacts the fees and rebates present on the Exchange today and influences the proposals set forth above.

*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.[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

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] Single contra-side orders are in Section I, Part A of the Exchange's Fee Schedule. There is one distinction, namely the Customer Fee for Removing Liquidity for a Single contra-side order is $0.25 per contract and there will be no Fee for Removing Liquidity for Complex Orders in the new combined Fee for Removing Liquidity for Select Symbols, which will include the Designated Options.

[16] *See* ISE's Schedule of Fees.

[17] 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)).

[18] *See* Exchange Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[19] *See* Exchange Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[20] Customers are not assessed a Complex Order Fee for Removing Liquidity today in Designated Options. Customers are assessed a $0.25 per contract Complex Order Fee For Removing Liquidity in the Select Symbols today. The Broker-Dealer fee would remain the same.

[21] Today, Customers are assessed a Complex Order Fee for Removing Liquidity in all Select Symbols, except Designated Options, of $0.25 per contract. This proposal would result in a decrease for Customers currently paying the $0.25 per contract fee today, as the proposed Customer rate in the combined category will be $0.00. The Exchange believes that this is reasonable because it is within the range of fees assessed by other exchanges. ISE does not assess its customers a complex order taker fee. *See* ISE's Schedule of Fees. The Exchange believes that decreasing the Customer Fee for Removing Liquidity in Complex Orders in the Select Symbols is equitable and not unfairly discriminatory because today there is no Complex Order Fee for Removing Liquidity for Designated Options and the proposed rates will uniformly assess no fee for Customers in the combined category.

[22] *See* ISE's Schedule of Fees.

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

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*. Please include File Number SR–Phlx–2011–147 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–2011–147. 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 a.m. and 3 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 Number SR–Phlx–2011–147 and should be submitted on or before December 7, 2011.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–29510 Filed 11–15–11; 8:45 am]

**BILLING CODE 8011–01–P**

[24] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65725; File No. SR–CBOE–2011–007]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change to Adopt Rules in Connection With S&P 500 Option Variance Basket Trades

November 10, 2011.

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 October 26, 2011, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 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 filing proposes to adopt rules in connection with S&P 500 option variance basket trades. 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.

**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.

[1] 15 U.S.C. 78s(b)(1).

[2] 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

The Exchange is proposing a new offering, called S&P 500 variance trades, which will allow investors to electronically trade a portfolio of S&P 500 Index options (SPX options) in a single transaction. An S&P 500 variance trade (also referred to as the ''basket'' or ''variance trade basket''), is intended to replicate S&P 500 implied variance.[3] Demand for volatility products has increased dramatically in recent years, and variance baskets will provide investors with another way to efficiently trade S&P 500 volatility.[4]

As an initial matter, S&P 500 variance trades will only trade electronically on CBOE (open-outcry S&P 500 variance trades will not be possible); each day, one or more new S&P 500 variance trade baskets will be available for trading, and transactions in each basket will occur on that day only; and, no market orders will be accepted. Each basket will consist of a portfolio of SPX options defined by the Exchange the day before it is available for trading. All of the constituent options of the basket will have the same expiration date and will be centered around an at-the-money strike price. It is expected that a full ''strip'' consisting of all series in the strike range would be offered every day.[5] Each basket will also have a unique ticker symbol. Market prices for S&P 500 variance trades will be expressed and quoted in volatility terms (*e.g.* 21.24). Trade quantities will be expressed in contracts. Each contract will have a multiplier of $10,000 or more, as determined and published by the Exchange (the Exchange would not

[3] ''Implied Variance'' refers to the market's expectation of daily price changes of a reference asset that is implied by the price of an option or a portfolio of options overlying that reference asset. Implied variance is related to the more commonly-used term, ''implied volatility,'' which is the square root of implied variance. The reference asset for S&P 500 variance trades is the S&P 500 Index. The portfolio of options intended to replicate S&P 500 implied variance is comprised of S&P 500 Index (SPX) options.

[4] The Exchange notes that S&P 500 variance trades do not replicate variance swaps.

[5] The Exchange notes that the proposed rule allows the Exchange to determine the days on which S&P 500 variance trades will be allowed, and that the Exchange will make publicly available a detailed description of the formulas and methodology used to deconstruct S&P 500 variance trades into constituent SPX option series. Further, for each day on which S&P 500 variance trades are allowed, the Exchange will publish, after the close of trading on the previous day, the options comprising the portfolio for the next day.