Act and paragraph (f)(2) of Rule 19b–4[16] thereunder.

Additionally, because the portion of the foregoing proposed rule change pertaining to the Exchange's trading floor booth policy 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18]

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–CBOE–2012–025 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–CBOE–2012–025. 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 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 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–CBOE–2012–025, and should be submitted on or before April 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8429 Filed 4–6–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66721; File No. SR–Phlx–2012–34]

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

April 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that, on March 26, 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 amend Section III of the Exchange's Pricing Schedule entitled ''Singly Listed Options.'' The Exchange also proposes to amend Section II of the Pricing Schedule entitled, ''Equity Options Fees'' to clarify text concerning rebates.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated certain changes be operative on April 2, 2012, namely the amendments to the Alpha Index Options Fees and the proposed MSCI Index Options Fees. The Exchange proposes the clarifying amendment in Section II be immediately effective.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* 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 Exchange proposes to amend Section III[3] of the Exchange's Pricing Schedule to: (1) Amend the Alpha Index Options Fees; and (ii) create fees for MSCI Index Options. With respect to the Alpha Index Options Fees, the Exchange is lowering the Customer fee and increasing the Professional,[4] Market Maker,[5] Firm and Broker-Dealer fees with respect to this index. Despite the increases, the fees will continue to be lower than the Options Transaction Charges for other Singly Listed Options.

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[16] 17 CFR 240.19b–4(f)(2).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Section III of the Pricing Schedule includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are not listed on another exchange.

[4] 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'').

[5] The term ''Market Maker'' is utilized herein to describe fees and rebates applicable to Specialists, Registered Options Traders, Streaming Quote Traders and Remote Streaming Quote Traders.

The Exchange proposes these amendments to support options overlying certain NASDAQ OMX Alpha Indexes™ (''Alpha Indexes'').[6] The Exchange is also proposing to create fees for the MSCI Indexes[7] and offer discounted pricing to encourage members and member organizations to trade options overlying MSCI Indexes.

Both the Alpha Indexes and MSCI Indexes trade on the Exchange as Singly Listed Options.[8] The Exchange currently assesses the following fees on options overlying Alpha Indexes:

	Customer	Professional	Market maker	Firm	Broker-Dealer
Alpha Index Options	$0.15+	$0.20	$0.00	$0.20	$0.20

\+ Customer executions with average daily volume of 1,000 Customer contracts or more in a calendar month will be assessed $0.10 per contract.

The Exchange is proposing to amend the Alpha Index Options Fees as noted below and assess the same fees for MSCI Index Options.

	Customer	Professional	Market maker	Firm	Broker-Dealer
Alpha and MSCI Index Options	$0.10	$0.25	$0.15	$0.25	$0.25

The Exchange proposes to eliminate the current incentive for Customer executions with average daily volume of 1,000 Customer contracts or more in a calendar month that are assessed $0.10 per contract. The Exchange is proposing to assess a $0.05 per contract surcharge on non-Customer executions in MSCI Index Options in order to recover a portion of the cost associated with licensing MSCI products.[9] The Exchange intends that the aforementioned fee amendments become operative on April 2, 2012.

The Exchange also proposes to amend Section II of the Pricing Schedule to clarify that the current $0.07 per contract rebate that is applicable to Customer Orders that are electronically-delivered to a member that has an average daily volume of 50,000 contracts are *Customer* contracts. The Exchange is assessing rebates for Customer orders based on Customer volume. The Exchange proposes to clarify the text of the Pricing Schedule by adding the word ''Customer'' in the section of the sentence pertaining to the average daily volume. The Exchange proposes this amendment to be immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(4) of the Act[11] 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 Alpha Index Options Fees and assess those same fees for MSCI Index Options is reasonable because the Exchange is seeking to recoup the operation and development costs associated with both the Alpha and MSCI Indexes.[12] The Exchange would also be assessing lower fees for these options products, despite the increase to certain market participants in the Alpha Index Options Fees, as compared to other Singly Listed Options products to encourage members and member organizations to trade options on Alpha and MSCI Indexes. For example, Customers would be assessed $0.10 per contract to transact options on Alpha and MSCI Indexes as compared to $0.35 per contract for other Singly Listed Options products; Professionals, Firms and Broker-Dealers would be assessed $0.25 per contract as compared to $0.45 per contract for all other Singly Listed Options products; and Market Makers would be assessed $0.15 per contract as compared to the $0.35 per contract for all other Singly Listed Options products.

The Exchange believes that its proposal to amend the Alpha Index Options Fees is equitable and not unfairly discriminatory because despite

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[6] The Exchange initially received approval to list Alpha Index Options limited to specific Alpha Indexes the Target Component of which is a single stock. Specifically, Alpha Indexes based 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, 2001) (SR–Phlx–2010–176). The Exchange expanded the number of Alpha Indexes on which options can be listed to include certain Alpha Indexes based on the following Alpha Pairs: DIA/SPY, EEM/SPY, EWJ/SPY, EWZ/SPY, FXI/SPY, GLD/SPY, IWM/SPY, QQQ/SPY, SLV/SPY, TLT/SPY, XLE/SPY and XLF/SPY. In these Alpha Indexes, the Target Component as well as the Benchmark Component is an ETF share. The proposed Alpha Index Options will enable investors to trade the relative performance of the market sectors represented by the Target Components as compared with the overall market performance represented by the Benchmark Component SPY. *See* Securities Exchange Act Release No. 65149 (August 17, 2011), 76 FR 52729 (August 23, 2011) (SR–Phlx–2011–89).

[7] The Exchange filed to list options on the MSCI EM Index. The MSCI EM Index is a free float-adjusted market capitalization index consisting of large and midcap component securities from countries classified by MSCI as ''emerging markets,'' and is designed to measure equity market performance of emerging markets. The index consists of component securities from the following 21 emerging market countries: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey. *See* Securities Exchange Act Release No. 66420 (February 17, 2012), 77 FR 11177 (February 24, 2012) (SR–Phlx–2011–179) (an order granting approval of the proposal to list and trade options on the MSCI EM Index). The Exchange also proposed to list options on the MSCI EAFE Index. The MSCI EAFE Index is a free float-adjusted market capitalization index that is designed to measure the equity market performance of developed markets, excluding the U.S. and Canada. The MSCI EAFE Index consists of component securities from the following twenty-two (22) developed market countries: Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom. *See* SR–Phlx–2012–28.

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

[9] The Exchange has entered into a license agreement with MSCI Inc. (''MSCI'') to list certain products.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] The Exchange continues to incur costs for maintaining the Alpha proprietary index including marketing expenses. The Exchange also has incurred and will continue to incur costs to list options on MSCI Indexes. In addition, the Exchange incurs certain additional costs related to Singly Listed options as compared to Multiply Listed options. For example, in analyzing an obvious error for a Singly Listed option, the Exchange does not have the additional data points available in establishing a theoretical price as is the case for a Multiply Listed option. For this reason, a Singly Listed option requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

the increase for all market participants, except Customers, the fees for Alpha Index Options would be lower than those for other Singly Listed Options products as detailed above. Specifically, the Customer fee for Alpha Index Options is being lowered from $0.15 per contract to $0.10 per contract to encourage market participants to transact a greater number of Customer orders in options overlying Alpha Indexes. 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 Professional, Firm and Broker-Dealer Alpha Index Options Fees would be increased by $0.05 per contract (from $0.20 per contract to $0.25 per contract) and these fees would be uniformly assessed to these market participants and exclude Customers and Market Makers, which market participant fees are more specifically described herein. Currently, Market Makers [13] are not assessed a fee for Alpha Index Options. The Exchange did not initially assess Market Makers a fee because the Exchange desired to encourage such Market Makers to transact Alpha Index Options. At this time, the Exchange still desires to encourage Market Makers to transact Alpha Index Options by assessing them a fee equal to that of a Customer ($0.15 per contract) while still continuing to recognize the burdensome quoting obligations [14] to the market which do not apply to Customers, Professionals, Firms and Broker-Dealers. The Exchange also believes the Market Maker fee amendment is equitable and not unfairly discriminatory because the amendment will more closely align the Market Maker fee with other market participant fees for Alpha Index Options.

The Exchange believes that the proposed MSCI Index Options fees are equitable and not unfairly discriminatory because the fees would be lower than those for other Singly Listed Options products as detailed above. In addition, the Exchange would be assessing a lower Customer fee ($0.10 per contract) because the Exchange, as noted above, seeks to encourage Customer order flow, which benefits all market participants. The Exchange would assess Market Makers a lower fee similar to a Customer ($0.15 per contract) because of the burdensome quoting obligations borne by these participants. The remaining market participants, Professionals, Firms and Broker-Dealers, would be uniformly assessed a $0.25 per contract fee to transact MSCI Index Options.

The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to assess a surcharge of $0.05 per contract for non-Customer executions in MSCI Index Options. The Exchange incurs licensing fees associated with MSCI products and seeks to recoup those costs with the surcharge. The Exchange believes it is equitable and not unfairly discriminatory to assess this surcharge on all participants except Customers because the Exchange seeks to encourage Customer order flow and the liquidity such order flow brings to the marketplace, which in turn benefits all market participants.

The Exchange has previously stated that it incurs higher costs for Singly Listed options as compared to Multiply Listed options.[15] 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 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).[16] 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 MSCI Indexes,[17] as a means to promote these new index products.[18] In addition, the Exchange believes that the proposed fees are reasonable, equitable 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 (''SPX℠'') are assessed different fees than other indexes.[19] In addition, the concept of offering a volume discount to incentivize order flow is not novel.[20]

The Exchange believes that its proposal to add the term ''Customer'' as a clarifying amendment to a sentence describing rebates in Section II is reasonable because the addition of the word ''Customer'' will further clarify that the rebate, applicable to Customer orders, is based on members that have a certain amount of Customer volume. The Exchange believes that the proposal to amend this text is equitable and not unfairly discriminatory because it will help to clarify the Pricing Schedule and the Exchange's calculation of its fees.

The Exchange operates in a highly competitive market, comprised of nine exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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

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[13] The term ''Market Maker'' is utilized herein to describe fees and rebates applicable to Specialists, Registered Options Traders, Streaming Quote Traders and Remote Streaming Quote Traders.

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

[15] *See* Securities Exchange Release Act No. 64096 (March 18, 2011), 76 FR 16646 (March 24, 2011) (SR–Phlx–2011–34).

[16] *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.

[17] The proposed fees for the MSCI Index Options are lower than the options transaction charges for other Singly Listed options products even including the proposed $0.05 surcharge on non-Customer executions.

[18] The Alpha Indexes are still in an early phase of their life cycle and the MSCI EM Index is not yet listed. If the Exchange determines to increase the pricing for options overlying Alpha or MSCI Indexes at a later date, the Exchange would file a proposal with the Commission.

[19] *See* CBOE's Fees Schedule.

[20] *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.

19(b)(3)(A)(ii) of the Act.[21] 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.* Please include File Number SR–Phlx–2012–34 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–2012–34. 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–Phlx–2012–34 and should be submitted on or before April 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8427 Filed 4–6–12; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66718; File No. SR–BX–2012–021]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for BX Members Using the NASDAQ OMX BX Equities System

April 3, 2012.

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 March 29, 2012, The NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by BX. 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

BX proposes to modify pricing for BX members using the NASDAQ OMX BX Equities System. BX will implement the proposed change on April 2, 2012. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at BX'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, BX 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. BX 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

BX is proposing to modify its rebate schedule with respect to orders that access liquidity at BX.[3] Currently, BX pays a rebate of $0.0014 per share executed with respect to orders entered through a market participant identifier (''MPID'') through which a member routes an average daily volume of 25,000 or more shares during the month.[4] For members that qualify for this rebate provision, the rebate applies to all shares entered through the MPID and executed on BX during the month, regardless of whether they are designated for routing. BX is proposing to eliminate this method of qualifying for a $0.0014 per share rebate, and replace it with an across-the-board rebate of $0.0014 per share executed for all orders that are designated for routing but that access liquidity on BX.

Both the provision being eliminated and the new provision are designed to provide incentives for BX members to make greater use of the Exchange's recently introduced routing service. The change reflects a concern that some members may be ''gaming'' the current provision by using BX's router only to the extent necessary to qualify for the higher rebate, which then applies to all of their orders entered through the applicable MPID. By contrast, the change would apply the $0.0014 rebate to all orders that are designated for routing, regardless of volume, but would not apply to orders that are not designated for routing. Other methods of

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

[2] 17 CFR 240.19b–4.

[3] The change applies to securities priced at $1 or more per share. Fees and rebates for lower-priced securities are unchanged.

[4] The $0.0014 per share executed rebate is also available for orders entered through an MPID through which the member (i) accesses an average daily volume of 3.5 million or more shares of liquidity, or (ii) provides an average daily volume of 25,000 or more shares of liquidity during the month.