

filing also will be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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–NYSEARCA–2012–121, and should be submitted on or before December 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68182; File No. SR–CHX–2012–16]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Single-Sided Orders Fees and Rebates

November 8, 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 November 2, 2012, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act <sup>3</sup> and Rule 19b–4(f)(2) thereunder, <sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 CHX proposes to amend its Schedule of Fees and Assessments (the “Fee Schedule”), effective November 2, 2012, to create a separate fee and rebate structure for each derivative and non-

derivative Tape A, B and C security, with respect to single-sided order executions of 100 or more shares. The text of this proposed rule change is available on the Exchange's Web site at [http://www.chx.com/rules/proposed\\_rules.htm](http://www.chx.com/rules/proposed_rules.htm) and in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549.

#### 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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

Through this filing, the Exchange proposes to amend its Schedule of Fees and Assessments (the “Fee Schedule”), effective November 2, 2012, to amend Section E.1 of the Fee Schedule, which concerns single-sided order executions of 100 or more shares, to establish fees and rebates specific to each derivative and non-derivative Tape A, B and C security type.

###### Current Section E.1

On January 9, 2012, the Exchange adopted the current Fee Schedule that incorporated, *inter alia*, a separate fee and rebate structure for Derivative Securities Products (“DSPs”) <sup>5</sup> and removed references to Tape A, B and C securities throughout its Fee Schedule. <sup>6</sup> Specifically, with respect to Section E.1, the Exchange eliminated the distinction in the fee and rebate structure for Tape A, B and C securities <sup>7</sup> and replaced it

with a structure based on DSPs and non-DSPs.

With respect to the current fees and rebates of Section E.1, for transactions in DSPs priced greater than or equal to \$1.00/share that are executed in the Regular Trading Session, the current Fee Schedule charges a fee of \$0.003/share for removing liquidity and gives a rebate of \$0.0022/share for providing liquidity. For transactions in non-DSPs priced equal to or greater than \$1.00/share that are executed in the Regular Trading Session, the current Fee Schedule charges a fee of \$0.003/share for removing liquidity, but gives no rebate for providing liquidity. For transactions in all securities priced equal to or less than \$1.00/share that are executed in the Early and Late Trading Sessions, the current Fee Schedule charges a fee of \$0.003/share for removing liquidity and gives a rebate of \$0.0022/share for providing liquidity. For transactions in all securities priced less than \$1.00/share, the current Fee Schedule charges a fee of 0.30% of trade value for removing liquidity and gives a rebate of \$0.00009/share for providing liquidity.

###### Proposed Section E.1

The Exchange now proposes to amend Section E.1 to reincorporate references to Tape A, B and C securities, while maintaining the distinction between DSPs and non-DSPs, so as to establish fees and rebates specific to each derivative and non-derivative Tape A, B and C security type and to maintain the current rebate and fee values, but for two exceptions. Specifically, the Exchange proposes to distinguish between “Regular” and “Early and Late” trading sessions. Each trading session will be further divided into six categories, one for each derivative and non-derivative Tape A, B and C security. Finally, each one of the six security-types will be then divided into securities priced greater than or equal to \$1.00/share or priced less than \$1.00/share. At this point, each security-type will be assigned a specific fee and rebate value, resulting in a total of twenty-four (24) distinct sets of fees and rebates.

With respect to the actual values of the fees and rebates of proposed Section E.1, the Exchange proposes to mostly adopt the fee and rebate values currently in Section E.1. Specifically, for transactions in Tape A and B Non-DSP securities priced greater than or equal to \$1.00/share executed during the Regular Trading Session, the

for which the NASDAQ Stock Exchange, Inc. is the primary listing center. Tape B securities are those securities for which some other national securities exchange is the primary listing market.

<sup>17</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

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

<sup>4</sup> 17 CFR 240.19b–4(f)(2).

<sup>5</sup> Per Section E.1 of the current Fee Schedule, “Derivative Securities Product” is defined as any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. This definition is drawn from Rule 19b–4(e). See 17 CFR 240.19b–4(e).

<sup>6</sup> See Exchange Act. Release No. 66139 (January 11, 2012), 77 F.R. 2583 (January 18, 2012) (SR–CHX–2012–01).

<sup>7</sup> Tape A securities are those securities for which the New York Stock Exchange, Inc. is the primary listing market. Tape C securities are those securities

Exchange proposes to maintain no liquidity providing rebate and a \$0.0030/share liquidity removing fee. Also, for transactions in Tapes A and B DSP securities priced greater than or equal to \$1.00/share executed during the Regular Trading Session and all Tapes DSP and Non-DSP securities priced greater than or equal to \$1.00 executed during the Early or Late Trading Session, the Exchange proposes to maintain a liquidity providing rebate of \$0.0020/share and a liquidity removing fee of \$0.0030/share. Furthermore, for transactions in all Tapes Non-DSP securities priced less than \$1.00/share executed in the Regular, Early or Late Trading Sessions, the Exchange proposes to maintain a liquidity providing rebate of \$0.00009/share and a liquidity removing fee of 0.30% of trade value.

However, the Exchange proposes a new fee and rebate for Tape C DSP and Non-DSP securities priced greater than or equal to \$1.00/share executed in the Regular Trading Session. Currently, for transactions in Tape C non-DSP securities priced greater than or equal to \$1.00/share executed in the Regular Trading Session, there is no liquidity providing rebate and a \$0.0030/share liquidity removing fee. Moreover, for transactions in Tape C DSP securities priced greater than or equal to \$1.00/share executed in the Regular Trading Session, there is currently a liquidity providing rebate of \$0.0020/share and a liquidity removing fee of \$0.0030/share. In lieu of these current values, the Exchange now proposes a liquidity providing rebate of \$0.00010/share and a liquidity removing fee of \$0.0006/share, for both of these security types. The Exchange submits that the imposition of these new fee and rebate values is necessary to promote order flow in Tape C securities to the Exchange.

Generally speaking, the purpose of this new fee and rebate structure is to create greater granularity in the Exchange's billing structure, which will in turn provide it with greater flexibility in setting fees and rebates.<sup>8</sup> This granularity will allow the Exchange to make fine-tuned adjustments, through future proposed fee filings pursuant to Rule 19b-4, to incentivize order flow in a specific group of securities, such as in Tape C securities, without affecting other fees or rebates associated with

orders in other groups of securities that the Exchange does not wish to impact. That is, such flexibility will allow the Exchange to adapt to fast-paced changes in today's orders marketplace and will, in turn, allow the Exchange to remain competitive for such orders.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. Specifically, since the proposed fee and rebate structure will apply to all single-sided orders of 100 or more shares executed in the CHX Matching System, the Exchange believes that it will equitably allocate the fees and rebates among Participants in a non-discriminatory nature. In addition, because quoting and trading activity is different among certain categories of securities, such as DSPs, as well as those securities on different Tapes, the Exchange believes that it is fair and reasonable to impose specific fees and rebates for each of the six security-types in order to better incentivize activity by Participants on the Exchange's trading facilities in those particular categories. Furthermore, the proposed values for the liquidity removing fees for each of the security types are reasonable where such values will either remain the same as the current fees or will decrease (in the case of transactions in Tape C DSP and Non-DSP securities priced greater than or equal to \$1.00/share executed in the Regular Trading Session) and where the proposed fee values are generally similar to the fees of other exchanges, such as NASDAQ.<sup>11</sup>

## 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 that is 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 solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is to take effect pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>13</sup> because it establishes or changes a due, fee or other charge applicable to the Exchange's members and non-members, which renders the proposed rule change effective upon filing.

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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2012-16 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-CHX-2012-16. 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

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> NASDAQ pricing provides for a flat fee of \$0.0030/share to remove liquidity for transactions in all Tape securities priced greater than or equal to \$1.00/share and a fee of 0.30% of total dollar volume for transactions in securities priced less than \$1.00/share.

<sup>8</sup> The Exchange endeavors to incorporate this new security-type specific fee structure throughout its Fee Schedule, to the extent applicable, through proposed rule filings, such as this one and SR-CHX-2012-15. SR-CHX-2012-15 proposes the adoption of a similar security-type specific fee structure in the context of order cancellation fees.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

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 10:00 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 CHX. 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-CHX-2012-16, and should be submitted on or before December 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68196; File No. SR-Phlx-2012-128]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees Assessed Under Section VII. C. of the Pricing Schedule

November 8, 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 October 26, 2012, NASDAQ OMX PHLX LLC ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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 modify fees assessed under Section VII. C. of the PHLX Pricing Schedule relating to the Central Registration Depository ("CRD system"), which are collected by FINRA. PHLX is proposing that the implementation date of the proposed rule change will be January 2, 2013. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com>, at PHLX'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, 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 those statements may be examined at the places specified in Item III [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

PHLX is amending its fees assessed under Section VII. C. of the PHLX Pricing Schedule to reflect a recent fee change made by FINRA,<sup>3</sup> relating to the CRD system.<sup>4</sup> The fees assessed under Section VII. C. are collected and retained by FINRA via the CRD system for the registration of associated persons of Exchange members that are not also FINRA members. The Exchange originally adopted the fees under Section VII. C. to mirror the fees assessed by FINRA on its members for use of the CRD system in connection with the Exchange's participation in Web CRD.<sup>5</sup> FINRA recently amended

the fees assessed for use of the CRD system, which will become effective January 2, 2013.<sup>6</sup> The CRD system fees are use-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a member of an exchange that is not a FINRA member. Accordingly, the Exchange is proposing to amend the fees under Section VII. C. to mirror those assessed by FINRA, which will be implemented concurrently with the amended FINRA fees on January 2, 2013.<sup>7</sup>

In addition to increasing the existing CRD system fees, FINRA adopted a new fee for the additional processing of each initial or amended Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings.<sup>8</sup> Member firms use the Form BD to, among other things, report disclosure matters in which they or a control affiliate have been involved. Prior to the adoption of the new fee, FINRA did not have a fee designed to cover the costs associated with the review of Form BD notwithstanding the review is similar to that performed of member firms' Forms U4 and U5. Such reviews include confirming that the matter is properly reported; reviewing any documentation submitted and determining whether additional documentation is required; conducting any necessary independent research; and, depending on the matter reported, analyzing whether the event or proceeding subjects the individual or member to a statutory disqualification pursuant to Section 3(a)(39) of the Act.<sup>9</sup> FINRA adopted a \$110 fee for the review of a Form BD, which mirrors the increased fee adopted for the review of Forms U4 and U5. As such, the Exchange is adopting the identical fee for FINRA's review of a Form BD submitted by Exchange members that are not members of FINRA.

The Exchange is proposing that the implementation date of the proposed

Phlx-2006-24). See also, Section 4(b)(3) of Schedule A to the FINRA By-Laws.

<sup>6</sup> *Supra* note 3.

<sup>7</sup> The Exchange notes that it is not adopting all of the changes made in the FINRA filing. Certain fees and requirements are specific to FINRA and the Exchange elected to not adopt them because either such fees did not apply to Exchange-only members or such fees did not directly cover the costs associated with the use of the CRD system. For example, under FINRA Section 4(h) of Schedule A FINRA assesses a fee of \$10 per day, up to \$300 for each day that a new disclosure event or a change in the status of a previously reported disclosure event is not timely filed on an initial or amended Form U5 or an amended Form U4. [sic] This fee provides a financial incentive to a FINRA member to file its Forms U4 and U5 timely. The Exchange elected to not adopt such a fee applicable to its members that are not also FINRA members.

<sup>8</sup> *Id.*

<sup>9</sup> 15 U.S.C. 78c(a)(39).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030).

<sup>4</sup> The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

<sup>5</sup> See Securities Exchange Act Release No. 53688 (April 20, 2006), 71 FR 24885 (April 27, 2006) (SR-