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Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2012 - * 34
Amendment No. (req. for Amendments *)

Proposed Rule Change by NASDAQ OMX PHLX LLC.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

- ☐ 19b-4(f)(1)
- ☑ 19b-4(f)(2)
- ☐ 19b-4(f)(3)
- ☐ 19b-4(f)(4)
- ☐ 19b-4(f)(5)
- ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Related to Singly Listed Options

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * Angela Last Name * Dunn
Title * Associate General Counsel
E-mail * angela.dunN@nasdaqomx.com
Telephone * (215) 496-5692 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 03/15/2012

By Angela Saccomandi Dunn
(Name *)

Associate General Counsel
(Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Angela Dunn, angela.dunn@phlx.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required) Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change (required) Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) NASDAQ OMX PHLX LLC ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] proposes to amend Section III of the Exchange's Fee Schedule entitled "Singly Listed Options." The Exchange also proposes to amend Section II of the Fee Schedule entitled, "Equity Options Fees" to clarify text concerning rebates.

While changes to the Fee 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 that the waiver of the options transaction charges for MSCI Index Options through close of business on March 30, 2012 and the clarifying amendment in Section II be immediately effective.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of the applicable portion of the Exchange's Fee Schedule is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on August 19, 2011. Exchange staff will advise the Board of Directors of any action taken pursuant to

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

[2] 17 CFR 240.19b-4.

delegated authority. No other action by the Exchange is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to Angela Saccomandi Dunn, Associate General Counsel, at (215) 496-5692.

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

a. Purpose

The Exchange proposes to amend Section III[3] of the Exchange's Fee Schedule to: (1) amend the Alpha Index Options Fees; and (ii) create fees for MSCI Index Options. The Exchange proposes these amendments to support options overlying certain NASDAQ OMX Alpha Indexes™ ("Alpha Indexes") and MSCI Indexes as well as offer discounted pricing to encourage members and member organizations to trade options overlying Alpha Indexes[4] and MSCI Indexes.[5]

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

[4] The Exchange initially listed 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).

Both the Alpha Indexes and MSCI Indexes trade on the Exchange as Singly Listed options.[6] 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

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[5] 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.

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

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.[7] The Exchange intends that the aforementioned fee amendments become operative on April 2, 2012.

Additionally, the Exchange proposes to list options on the MSCI EM Index on or after March 19, 2012. The Exchange proposes to waive the options transaction charge for MSCI Index Options through close of business on March 30, 2012.[8] The Exchange proposes this amendment to be immediately effective. Thereafter, the Exchange would assess the fees proposed herein for MSCI Index Options as of April 2, 2012.

The Exchange also proposes to amend Section II of the Fee 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 Fee 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.

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

[8] The Exchange is proposing to waive the options transaction charges applicable to Singly Listed options in Section III of the Exchange's Fee Schedule. Today, these fees would apply to any listed MSCI product. See Section III of the Exchange's Fee Schedule.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] 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 it is equitable, reasonable and not unfairly discriminatory to waive the Singly Listed options transaction charges for MSCI Index Options though the close of business on March 30, 2012, because the Exchange seeks to encourage members to trade options on the newly listed MSCI EM Index. Also, the Exchange would waive these fees for all members uniformly.

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.[11] The Exchange would also be assessing lower fees for these options products as compared to other Singly Listed options products to encourage members and member organizations to trade options on Alpha and MSCI Indexes.

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[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 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 Exchange believes that its proposal to amend the Alpha Index Options Fees and assess those same fees for MSCI Index Options is equitable and not unfairly discriminatory because all market participants would be assessed lower fees for transacting options on Alpha Indexes and MSCI Indexes as compared to other Singly Listed options products. Specifically, 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. 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. Professionals,[12] 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. Market Makers[13] would be assessed $0.15 per contract as compared to the $0.35 per contract for all other Singly Listed options products. The Exchange notes that Market Makers have burdensome quoting obligations[14] to the market which do not apply to Professionals, Firms and Broker-Dealers.

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

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[12] 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").

[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."

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

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[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

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 Fee 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

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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.

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.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[21] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

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

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

5. Applicable portion of the Exchange's Fee Schedule.

Exhibit 1

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

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Singly Listed 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 March 15, 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 Fee Schedule entitled "Singly Listed Options." The Exchange also proposes to amend Section II of the Fee Schedule entitled, "Equity Options Fees" to clarify text concerning rebates.

While changes to the Fee 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 that the waiver of the options transaction charges for MSCI Index Options through close of business on March 30, 2012 and the clarifying amendment in Section II be immediately effective.

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

[2] 17 CFR 240.19b-4.

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 Exchange proposes to amend Section III[3] of the Exchange's Fee Schedule to: (1) amend the Alpha Index Options Fees; and (ii) create fees for MSCI Index Options. The Exchange proposes these amendments to support options overlying certain NASDAQ OMX Alpha Indexes™ ("Alpha Indexes") and MSCI Indexes as well as offer discounted pricing to encourage members and member organizations to trade options overlying Alpha Indexes[4] and MSCI Indexes.[5]

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

[4] The Exchange initially listed 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

Both the Alpha Indexes and MSCI Indexes trade on the Exchange as Singly Listed options.[6] 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.

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).

[5] 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.

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

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.[7] The Exchange intends that the aforementioned fee amendments become operative on April 2, 2012.

Additionally, the Exchange proposes to list options on the MSCI EM Index on or after March 19, 2012. The Exchange proposes to waive the options transaction charge for MSCI Index Options through close of business on March 30, 2012.[8] The Exchange proposes this amendment to be immediately effective. Thereafter, the Exchange would assess the fees proposed herein for MSCI Index Options as of April 2, 2012.

The Exchange also proposes to amend Section II of the Fee 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

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

[8] The Exchange is proposing to waive the options transaction charges applicable to Singly Listed options in Section III of the Exchange's Fee Schedule. Today, these fees would apply to any listed MSCI product. See Section III of the Exchange's Fee Schedule.

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 Fee 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 Fee Schedule is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] 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 it is equitable, reasonable and not unfairly discriminatory to waive the Singly Listed options transaction charges for MSCI Index Options though the close of business on March 30, 2012, because the Exchange seeks to encourage members to trade options on the newly listed MSCI EM Index. Also, the Exchange would waive these fees for all members uniformly.

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. [11] The Exchange would also be assessing lower fees for these options products

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 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

as compared to other Singly Listed options products to encourage members and member organizations to trade options on Alpha and MSCI Indexes.

The Exchange believes that its proposal to amend the Alpha Index Options Fees and assess those same fees for MSCI Index Options is equitable and not unfairly discriminatory because all market participants would be assessed lower fees for transacting options on Alpha Indexes and MSCI Indexes as compared to other Singly Listed options products. Specifically, 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. 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. Professionals,[12] 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. Market Makers[13] would be assessed \$0.15 per contract as compared to the \$0.35 per contract for all other Singly Listed options products. The Exchange notes

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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.

[12] 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").

[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.

that Market Makers have burdensome quoting obligations[14] to the market which do not apply to Professionals, Firms and Broker-Dealers.

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

[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.

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

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[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.

discriminatory because it will help to clarify the Fee 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 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

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

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-2012-34 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 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 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 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-2012-34 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.[22]

Kevin M O'Neill
Deputy Secretary

[22] 17 CFR 200.30-3(a)(12).

Exhibit 5

New text is underlined; deleted text is in brackets.

NASDAQ OMX PHLX LLC
FEE SCHEDULE

* * * * *

II. Equity Options Fees
(Includes options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed)

* * * * *

● A rebate of $0.07 per contract will be paid for Customer Orders that are electronically-delivered to a member that has an average daily volume of 50,000 Customer contracts or greater in a given month. PIXL Orders and QCC Orders are not eligible for the rebate and are excluded from the calculation of the average daily volume.

* * * * *

III. Singly Listed Options (Includes options overlying currencies*, equities, ETFs, ETNs, indexes and HOLDRS not listed on another exchange)

Singly Listed Options

	Customer	Professional	Market Maker	Firm	Broker-Dealer
Options Transaction Charge	$0.35	$0.45	$0.35	$0.45	$0.45
Alpha and MSCI+ Index Options	$0.10[5+]	$0.2[0]5	$0.15[00]	$0.2[0]5	$0.2[0]5

● These fees are per contract.

**U.S. dollar-settled foreign currency options include XDB, XDE, XDN, XDS, XDA, XDM, XEH, XEV, XDZ, XDC and XDV.*

+ Non-Customer [Customer] executions in MSCI Index Options will be assessed a surcharge of $0.05 per contract [with average daily volume of 1,000 Customer contracts or more in a calendar month will be assessed $0.10 per contract].

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