

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67022; File No. SR-NASDAQ-2012-043]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Establish the Market Quality Program

May 18, 2012.

On March 23, 2012, The NASDAQ Stock Market LLC (“NASDAQ”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to establish the Market Quality Program. On March 29, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on April 12, 2012.⁴ The Commission received fifteen comment letters on the proposal.⁵

Section 19(b)(2) of the Act⁶ provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is May 27, 2012. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, the comments received, and any response to the comments

submitted by NASDAQ. The proposed rule change would, among other things, add new Rule 5950 to establish the Market Quality Program and exempt the Market Quality Program from NASDAQ Rule 2460 (Payment for Market Making).

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁷ designates July 11, 2012, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR-NASDAQ-2012-043).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Kevin M. O’Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67020; File No. SR-NYSEArca-2012-41]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule Relating to Electronic Executions of Posted Customer Liquidity in Penny Pilot Issues

May 18, 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 May 8, 2012, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

April 18, 2012; Letter from Mark Connell, dated April 19, 2012; Letter from Timothy Quast, Managing Director, Modern Networks IR LLC, dated April 26, 2012; Letter from Daniel G. Weaver, Ph.D., Professor of Finance, Rutgers Business School, dated April 26, 2012; Letter from Amber Anand, Associate Professor of Finance, Syracuse University, dated April 29, 2012; Letter from Albert J. Menkveld, Associate Professor of Finance, VU University Amsterdam, dated May 2, 2012; Letter from James J. Angel, Associate Professor of Finance, Georgetown University, dated May 2, 2012; Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated May 3, 2012; Letter from Gus Sauter, Managing Director and Chief

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (“Fee Schedule”) to restructure the threshold qualifications and corresponding rates applicable to Option Trading Permit (“OTP”) Holder and OTP Firm electronic executions of posted Customer liquidity in Penny Pilot issues. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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 the Fee Schedule to restructure the threshold qualifications and corresponding rates applicable to OTP Holder and OTP Firm electronic executions of posted Customer liquidity in Penny Pilot issues. The Exchange proposes to make the changes operative on May 8, 2012.

OTP Holders and OTP Firms are currently provided with a credit of \$0.25 per contract for electronic executions of posted Customer liquidity in Penny Pilot issues.³ However, the amount of this credit increases as an OTP Holder or OTP Firm electronically executes a certain monthly total number

Investment Officer, Vanguard, dated May 3, 2012; and Letter from Leonard J. Amoruso, General Counsel, Knight Capital Group, Inc., dated May 4, 2012.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made a technical amendment to Item I of Exhibit 1 to delete an erroneous reference to the NASDAQ Options Market and replace it with a reference to the Exchange.

⁴ Securities Exchange Act Release No. 66765 (April 6, 2012), 77 FR 22042.

⁵ See Letter from Frank Choi, dated April 13, 2012; Letter from Christopher J. Csicsko, dated April 14, 2012; Letter from Jeremiah O’Connor III, dated April 14, 2012; Letter from Dezso J. Szalay, dated April 15, 2012; Letter from Kathryn Keita, dated April 18, 2012; Letter, Anonymous, dated

⁶ 15 U.S.C. 78s(b)(2).
⁷ 15 U.S.C. 78s(b)(2).
⁸ 17 CFR 200.30-3(a)(31).
¹ 15 U.S.C. 78s(b)(1).
² 17 CFR 240.19b-4.
³ As provided under NYSE Arca Options Rule 6.72, options on certain issues have been approved to trade with a minimum price variation of \$0.01 as part of a pilot program that is currently scheduled to expire on June 30, 2012.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made a technical amendment to Item I of Exhibit 1 to delete an erroneous reference to the NASDAQ Options Market and replace it with a reference to the Exchange.

⁴ Securities Exchange Act Release No. 66765 (April 6, 2012), 77 FR 22042.

⁵ See Letter from Frank Choi, dated April 13, 2012; Letter from Christopher J. Csicsko, dated April 14, 2012; Letter from Jeremiah O’Connor III, dated April 14, 2012; Letter from Dezso J. Szalay, dated April 15, 2012; Letter from Kathryn Keita, dated April 18, 2012; Letter, Anonymous, dated

of contracts of posted Customer liquidity in Penny Pilot issues. These current thresholds and rates are as follows:

	Monthly total contracts executed from posted liquidity	Per contract rate on all posted liquidity
Threshold 1	More than 350,000	– \$0.28
Threshold 2	More than 800,000	– 0.36
Threshold 3	More than 1,200,000	– 0.42
Threshold 4	More than 3,500,000	– 0.43

The volume thresholds and corresponding credits are intended to incent OTP Holders and OTP Firms to route additional Customer orders in Penny Pilot issues to the Exchange. In this regard, once a particular threshold is met, the per contract credit rate applies to all of the OTP Holder's or OTP Firm's electronic executions of posted Customer liquidity in Penny Pilot issues for the month.

The Exchange proposes to restructure the threshold qualifications as follows:⁴

- First, the current thresholds are based on the total number of contracts of posted Customer liquidity in Penny Pilot issues that an OTP Holder or OTP Firm executes electronically during the course of a month. The Exchange will now calculate the qualification based on average daily volume (“ADV”) in various categories instead of total monthly volume. For purposes of this calculation, days when the market closes early are not included in the ADV.⁵ The credit applied to posted electronic customer orders in Penny Pilot issues will continue to be a base rate of \$0.25 per executed contract.

- OTP Holders and OTP Firms who have an ADV of 15,000 executed electronic posted Customer contracts in Penny Pilot issues will have a credit of \$0.38 (“Tier 1”) applied to posted electronic Customer contracts executed in Penny Pilot issues.⁶

- OTP Holders and OTP Firms will have two alternative methods to qualify for a credit of \$0.40 (“Tier 2”) applied to posted electronic Customer contracts executed in Penny Pilot issues. An OTP Holder or OTP Firm may qualify for Tier 2 by:
 - Having an ADV of 25,000 executed electronic posted Customer contracts in Penny Pilot issues, or
 - Having an ADV of 75,000 executed electronic posted contracts in Penny Pilot issues, regardless of Clearing Account type, from all affiliated OTP Holders and OTP Firms.

- OTP Holders and OTP Firms who have an ADV of 50,000 executed electronic posted Customer contracts in Penny Pilot issues will have a credit of \$0.43 (“Tier 3”) applied to posted electronic Customer contracts executed in Penny Pilot issues.

- OTP Holders and OTP Firms will have three alternative methods to

qualify for a credit of \$0.44 (“Tier 4”) applied to posted electronic Customer contracts executed in Penny Pilot issues. An OTP Holder or OTP Firm may qualify by:

- Having a combination of an ADV of 65,000 executed electronic posted Customer contracts in Penny Pilot issues AND an average daily posted share volume on NYSE Arca Equities, executed electronically by an affiliated Equity Trading Permit (“ETP”) Holder, of 0.30% or more of U.S. Consolidated ADV for transactions reported to the Consolidated Tape, excluding volume on days when the market closes early, or

- Having an ADV of 100,000 executed electronic posted contracts in Penny Pilot issues, regardless of Clearing Account type, from all affiliated OTP Holders and OTP Firms, or

- Having an ADV of 100,000 executed electronic Customer contracts, either posted or removing, in Penny Pilot issues.

Collectively, the proposed new tiers and corresponding rates would be as follows:

Tier	Qualification basis (average electronic executions per day)**			Credit applied to posted electronic customer executions in penny pilot issues
Base .....	.....	.....	.....	(\$0.25)
Tier 1	15,000 Customer Posted Contracts in Penny Pilot Issues.	.....	.....	(\$0.38)
Tier 2	25,000 Customer Posted Contracts in Penny Pilot Issues, or.	75,000 Posted Contracts in Penny Pilot Issues, any Account Type*.	.....	(\$0.40)
Tier 3	50,000 Customer Posted Contracts in Penny Pilot Issues.	.....	.....	(\$0.43)

⁴ The current threshold qualifications and corresponding credit rates would apply to executions prior to May 8, 2012. In this regard, if an OTP Holder's or OTP Firm's electronic executions of posted customer liquidity in May 2012 satisfy one of the current thresholds, the current per contract credit rate would apply to all of the OTP Holder's or OTP Firm's electronic

executions of posted Customer liquidity in Penny Pilot issues from May 1, 2012 through May 7, 2012.

⁵ For the month of May 2012, ADV would be calculated from May 8, 2012, the effective and operative date of this proposed change, through the end of the month. In this regard, if an OTP Holder or OTP Firm qualifies for a particular proposed new tier during May 2012, the proposed corresponding

per contract credit rate would apply to all of the OTP Holder's or OTP Firm's electronic executions of posted Customer liquidity in Penny Pilot issues from May 8, 2012 through the end of May 2012.

⁶ Qualified Contingent Cross (“QCC”) Orders are neither posted nor taken; thus QCC transactions are not included in any of the options volume calculations.

Tier				
Tier 4	65,000 Customer Posted Contracts in Penny Pilot Issues, Plus 0.3% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market,* or.	100,000 Posted Contracts in Penny Pilot Issues, any Account type,* or.	100,000 Customer Posted and Removing Contracts in Penny Pilot Issues.	(\$0.44)

* Includes transaction volume from the OTP Holder's or OTP Firm's affiliates.

** For the month of May 2012, calculation of average electronic executions per day shall begin on May 8, 2012.

The Exchange proposes to retain the current table in the Fee Schedule for the remainder of May 2012, but thereafter to remove it completely, along with any other text within the current and proposed new tables that has been included to differentiate between the current thresholds and rates and newly proposed tiers and rates.⁷ The proposed new table would represent the restructuring of the qualifications, with new rows and headers. The Exchange also proposes to streamline the introductory language for the proposed new tier and rate table in the Fee Schedule, as compared to the current table, by specifying that, as is the case today, OTP Holders and OTP Firms that satisfy the applicable tiers will receive the corresponding posting credits on all posted Customer electronic executions in Penny Pilot issues. This would include language specifying that, as is the case today, the credit rate applies to all posted Customer electronic executions by the OTP Holder or OTP Firm in Penny Pilot issues for the month.

Finally, the Exchange will add explanatory endnote 8 noting that executions of QCC orders and routed orders are not included in the volume calculation, that the definition of "Affiliate" is provided in NYSE Arca Rule 1.1(a),⁸ and that only electronic executions are included in the volume calculation. The insertion of a new endnote will result in the renumbering of all subsequent existing endnotes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

⁷ The Exchange would submit a proposed rule change with the Commission to effect the removal of this language.

⁸ Affiliated firms are those that control, or are controlled by, or are under common control with an OTP Holder or OTP Firm. OTP Holders and OTP Firms must report their Affiliates, including ETP Holders, to the Exchange's Client Relations Services ("CRS") Department. CRS will inform the Exchange's billing department of changes in affiliate status that would affect the qualification of trading volumes with respect to these fees.

Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁰ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed restructuring of the current thresholds and credits is reasonable, equitable and not unfairly discriminatory because the resulting tiers and credits would preserve an existing program on the Exchange that encourages OTP Holders and OTP Firms to send additional Customer orders to the Exchange. In this regard, the Exchange believes that the proposed tiers and corresponding credits would continue to incentivize OTP Holders and OTP Firms to increase the level of Customer order flow sent to, and liquidity added on, the Exchange, thereby potentially improving the quality and efficiency of order interaction and executions on the Exchange.

The Exchange believes that the proposed increase in the applicable credits would further incentivize OTP Holders and OTP Firms to send Customer orders to the Exchange. The Exchange believes that this aspect of the proposed change is reasonable, equitable and not unfairly discriminatory because the higher credits would create an incrementally higher incentive for OTP Holders and OTP Firms to bring additional liquidity to the Exchange, which may contribute to price discovery and may benefit investors, generally. The Exchange notes that it has proposed these higher credits without proposing any increase in the fees charged to OTP Holders and OTP Firms for executions of Customer orders that remove liquidity from the Exchange. Accordingly, the proposed

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

change may have the effect of reducing overall Customer execution costs, to the extent that OTP Holders and OTP Firms pass this savings on to Customers.

The Exchange further believes that the proposed tiers are reasonable, equitable and not unfairly discriminatory because they are set at levels that would be more achievable for OTP Holders and OTP Firms. In this regard, the Exchange has proposed that the volume levels for the tiers be decreased as compared to the current thresholds. Additionally, the Exchange has proposed more than one method of qualifying for certain of the tiers. Overall, the Exchange believes that this will result in more OTP Holders and OTP Firms qualifying for the tiers, receiving the increased credits, and therefore reducing their overall transaction costs on the Exchange. The Exchange also believes that the proposed change is reasonable, equitable and not unfairly discriminatory because the rates for the proposed credits are set at levels that are directly related to the level of liquidity required under the proposed corresponding tiers.

The Exchange further believes that the proposed change is reasonable, equitable and not unfairly discriminatory because the tiers, and the corresponding credits, will apply uniformly to all OTP Holders and OTP Firms. Additionally, the Exchange believes that the aspect of the proposed change related to the activity of an affiliated ETP Holder on NYSE Arca Equities is reasonable, equitable and not unfairly discriminatory because it would encourage increased trading activity on both the NYSE Arca equity and option markets. In this regard, the proposal is designed to bring additional posted order flow to NYSE Arca Equities, so as to provide additional opportunities for all ETP Holders to trade on NYSE Arca Equities.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must

continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. The Exchange believes that the proposed rule change reflects this competitive environment because it would broaden the conditions under which OTP Holders and OTP Firms may qualify for the tiers and because it would result in an increase in the corresponding credit rates.

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 with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such 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-NYSEArca-2012-41 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-NYSEArca-2012-41. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2012-41 and should be submitted on or before June 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67026; File No. SR-Phlx-2012-68]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, by NASDAQ OMX PHLX LLC To Accept Inbound Orders From NASDAQ OMX BX's New Options Market

May 18, 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 May 15, 2012, NASDAQ OMX PHLX LLC ("Exchange" or "PHLX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Item I below, which Item has been prepared by the Exchange. On May 17, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change.³ 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 file with the Commission a proposal for PHLX to accept inbound orders routed by NASDAQ Options Services LLC ("NOS") from NASDAQ OMX BX's new options market (with the attendant obligations and conditions), as described further below, on a one year pilot basis.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made a technical amendment to the Item 3.a of the Form 19b-4 and Item II of Exhibit 1 in the third bullet point, which begins with the word "Third" to add the words "the Exchange or" in front of the word "FINRA" in the second parenthetical.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 17 CFR 200.30-3(a)(12).