

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2012-56 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-NYSEMKT-2012-56. 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 10:00 a.m. and 3:00 p.m. Copies of such 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-NYSEMKT-2012-56, and should be submitted on or before November 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-27222 Filed 11-6-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68132; File No. SR-Phlx-2012-126]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of Certain Securities

November 1, 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 19, 2012, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade option contracts overlying 10 shares of a security ("Mini Options").

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 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 purpose of the proposed rule change is to amend Rule 1001 (Position Limits), Rule 1012 (Series of Options Open for Trading) and 1033 (Bids and Offers—Premium) to list and trade Mini Options overlying five (5) high-priced securities for which the standard contract overlying the same security exhibits significant liquidity. Specifically, the Exchange proposes to list Mini Options on SPDR S&P 500 ("SPY"), Apple, Inc. ("AAPL"), SPDR Gold Trust ("GLD"), Google Inc. ("GOOG") and Amazon.com Inc. ("AMZN").<sup>3</sup> The Exchange believes that this proposal would allow investors to select among options on various high-priced and actively traded securities, each with a unit of trading ten times lower than those of the regular-sized options contracts, or 10 shares.

For example, with Apple Inc. ("AAPL") trading at \$605.85 on March 21, 2012, (\$60,585 for 100 shares underlying a standard contract), the 605 level call expiring on March 23 was trading at \$7.65. The cost of the standard contract overlying 100 shares would be \$765, which is substantially higher in notional terms than the average equity option price of \$250.89.<sup>4</sup> Proportionately equivalent mini-options contracts on AAPL would provide investors with the ability to manage and hedge their portfolio risk on their underlying investment, at a price of \$76.50 per contract. In addition, investors who hold a position in AAPL at less than the round lot size would still be able to avail themselves of

<sup>3</sup> These issues were selected because they are priced greater than \$100 and are among the most actively traded issues, in that the standard contract exhibits average daily volume ("ADV") over the previous three calendar months of at least 45,000 contracts, excluding LEAPS and FLEX series. The Exchange notes that any expansion of the program would require that a subsequent proposed rule change be submitted to the Commission.

<sup>4</sup> A high priced underlying security may have relatively expensive options, because a low percentage move in the share price may mean a large movement in the options in terms of absolute dollars. Average non-FLEX equity option premium per contract January 1–December 31, 2011. See <http://www.theocc.com/webapps/monthly-volume-reports?reportClass=equity>.

<sup>15</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.

options to manage their portfolio risk. For example, the holder of 50 shares of AAPL could write covered calls for five

mini-options contracts. The table below demonstrates the proposed differences between a mini-options contract and a

standard contract with a strike price of \$125 per share and a bid or offer of \$3.20 per share:

	Standard	Mini
Share Deliverable Upon Exercise .....	100 shares	10 shares
Strike Price .....	125 .....	125
Bid/Offer .....	3.20 .....	3.20
Premium Multiplier .....	\$100 .....	\$10
Total Value of Deliverable .....	\$12,500 ...	\$1,250
Total Value of Contract .....	\$320 .....	\$32

The Exchange currently lists and trades standardized option contracts on a number of equities and Exchange-Traded Funds (“ETFs”) each with a unit of trading of 100 shares. Except for the difference in the number of deliverable shares, the proposed Mini Options would have the same terms and contract characteristics as regular-sized equity and ETF options, including exercise style. All existing Exchange rules applicable to options on equities and ETFs would apply to Mini Options, except with respect to position and exercise limits and hedge exemptions to those position limits, which would be tailored for the smaller size. Pursuant to proposed amendments to Rule 1001, position limits applicable to a regular-sized option contract would also apply to the Mini Options on the same underlying security, with 10 Mini Option contracts counting as one regular-sized contract. Positions in both the regular-sized option contract and Mini Options on the same security will be combined for purposes of calculating positions. Further, hedge exemptions will apply pursuant to Rule 1001, Commentary .07, which the Exchange proposes to revise to provide that 10 (as opposed to 100) shares of the underlying security is the appropriate hedge for Mini Options and to make clear that the hedge exemptions apply to the position limits set forth in Rule 1001(a) and Rule 1001, Commentary .02(i).<sup>5</sup>

Also, of note, NYSE Arca, Inc. (“NYSE Arca”) lists and trades option contracts overlying a number of shares other than 100.<sup>6</sup> Moreover, the concept of listing and trading parallel options

products of reduced values and sizes on the same underlying security is not novel. For example, parallel product pairs on a full-value and reduced-value basis are currently listed on the S&P 500 Index (“SPX” and “XSP,” respectively), the Nasdaq 100 Index (“NDX” and “MNX,” respectively) and the Russell 2000 Index (“RUT” and “RMN,” respectively).

The Exchange believes that the proposal to list Mini Options will not lead to investor confusion. There are two important distinctions between Mini Options and regular-sized options that are designed to ease the likelihood of any investor confusion. First, the premium multiplier for the proposed Mini Options will be 10, rather than 100, to reflect the smaller unit of trading. To reflect this change, the Exchange proposes to add Rule 1033(b)(iii) which notes that bids and offers for an option contract overlying 10 shares would be expressed in terms of dollars per 1/10th part of the total value of the contract. Thus, an offer of “.50” shall represent an offer of \$5.00 on an option contract having a unit of trading consisting of 10 shares. Second, the Exchange intends to designate Mini Options with different trading symbols than those designated for the regular-sized contracts. For example, while the trading symbol for regular option contracts for Apple, Inc. is AAPL, the Exchange proposes to adopt AAPL7 as the trading symbol for Mini Options on that same security.

The Exchange proposes to add a Commentary .13 to Rule 1012 to reflect that strike prices for Mini Options shall be set at the same level as for regular options. For example, a call series strike price to deliver 10 shares of stock at \$125 per share has a total deliverable value of \$1,250, and the strike price will be set at 125. Further, pursuant to proposed new Commentary .13 to Rule 1012, the Exchange proposes to not permit the listing of additional series of Mini Options if the underlying is trading at \$90 or less to limit the number of strikes once the underlying is no longer a high priced security. The

Exchange proposes a \$90.01 minimum for continued qualification so that additional series of Mini Options that correspond to standard strikes may be added even though the underlying has fallen slightly below the initial qualification standard. In addition, the underlying security must be trading above \$90 for five consecutive days before the listing of Mini Option contracts in a new expiration month. This restriction will allow the Exchange to list strikes in Mini Options without disruption when a new expiration month is added even if the underlying has had a minor decline in price. The same trading rules applicable to existing equity and ETF options would apply, including Market Maker obligations, to Mini Options.<sup>7</sup>

The Exchange notes that by listing the same strike price for Mini Options as for regular options, the Exchange seeks to keep intact the long-standing relationship between the underlying security and an option strike price thus allowing investors to intuitively grasp the option’s value, *i.e.*, option is in the money, at the money or out of the money. The Exchange believes that by not changing anything but the multiplier and the option symbol, as discussed above, retail investors will be able to grasp the distinction between regular option contracts and Mini Options. The Exchange notes that The Options Clearing Corporation (“the OCC”) Symbology is structured for contracts that have a deliverable of other than 100 shares to be designated with a numeric added to the standard trading symbol. Further, the Exchange believes that the contract characteristics of Mini Options are consistent with the terms of the Options Disclosure Document.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading

<sup>5</sup> Phlx Rule 1002, Exercise Limits, refers to exercise limits that correspond to aggregate long positions as described in Phlx Rule 1001. Today, the position limits established in a given option under Rule 1001 is also the exercise limit for such option. Thus, although the proposed rule change would not amend the text of Rule 1002 (Exercise Limits) itself, the proposed amendment to Rule 1001 (Position Limits) would have a corresponding effect on the exercise limits.

<sup>6</sup> See Securities Exchange Act Release No. 44025 (February 28, 2001), 66 FR 13986 (March 8, 2001) (approving SR-PCX-01-12).

<sup>7</sup> See Rule 1014.

of Mini Options. The Exchange has further discussed the proposed listing and trading of Mini Options with the OCC, which has represented that it is able to accommodate the proposal. In addition, the Exchange would file a proposed rule change to adopt transaction fees specific to Mini Options. The Exchange notes that the current Pricing Schedule will not apply to the trading of mini-options contracts. The Exchange will not commence trading of mini-option contracts until specific fees for mini-options contracts trading have been filed with the Commission.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities and Exchange Act of 1934 ("Exchange Act"),<sup>8</sup> in general, and with Section 6(b)(5) of the Exchange Act,<sup>9</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that investors would benefit from the introduction and availability of Mini Options by making options on high priced securities more readily available as an investing tool at more affordable prices, particularly for average retail investors, who otherwise may not be able to participate in trading options on high priced securities. The Exchange intends to adopt a different trading symbol to distinguish Mini Options from its currently listed option contracts and therefore, eliminate investor confusion with respect to product distinction. Moreover, the proposed rule change is designed to protect investors and the public interest by providing investors with an enhanced tool to reduce risk in high priced securities. In particular, Mini Options would provide retail customers who invest in SPY, AAPL, GLD, GOOG and AMZN in lots of less than 100 shares with a means of protecting their investments that is currently only available to those who have positions of 100 shares or more. Further, the proposed rule change is limited to just five high priced securities to ensure that only securities that have significant options liquidity and therefore, customer demand, are selected to have Mini Options listed on them.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

## 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. To the contrary, the Exchange believes that offering these products on Phlx similar to other exchanges will provide investors with various venues in which to trade Mini Options.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it can list and trade the proposed mini options as soon as it is able.<sup>12</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>13</sup> The Commission notes

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

<sup>12</sup> The Commission notes that the Exchange's current Pricing Schedule will not apply to the trading of mini-options contracts, and the Exchange will not commence trading of mini-option contracts until specific fees for mini-options contracts trading have been filed with the Commission.

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has also

the proposal is substantively identical to a proposal that was recently approved by the Commission, and does not raise any new regulatory issues.<sup>14</sup> For these reasons, the Commission designates the proposed rule change as operative 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-Phlx-2012-126 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-2012-126. 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

considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> See Securities Exchange Act Release No. 67948 (September 28, 2012), 77 FR 60735 (October 4, 2012) (SR-NYSEArca-2012-64 and SR-ISE-2012-58).

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 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-2012-126 and should be submitted on or before November 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

[FR Doc. 2012-27131 Filed 11-6-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68129; File No. SR-NASDAQ-2012-120]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Annual Fees for Companies Listed on the Nasdaq Capital Market

November 1, 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 18, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or the "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 Substance of the Proposed Rule Change

NASDAQ is proposing a change to modify the annual fees for companies listed on the Nasdaq Capital Market.

The text of the proposed rule change is below. Proposed new language is in

*italics*; proposed deletions are in [brackets].

5920. The Nasdaq Capital Market

(a)-(b) No change.

(c) Annual Fee

(1)

(A) The issuer of each class of securities that is a domestic or foreign issue, other than American Depositary Receipts (ADRs), listed on the Nasdaq Capital Market shall pay to Nasdaq an annual fee in the amount of [\$27,500] \$32,000.

(B) [The] *Effective January 1, 2013*, the issuer of each class of securities that is an ADR listed on [The] *the* Nasdaq Capital Market shall pay to Nasdaq an annual fee *in the amount of \$25,000. Effective January 1, 2014, the issuer of each class of securities that is an ADR listed on the Nasdaq Capital Market shall pay to Nasdaq an annual fee in the amount of \$32,000.* [calculated on ADRs outstanding according to the following schedule:

Up to 10 million ADRs	\$17,500
Over 10 million ADRs	\$21,000]

(2)-(8) No change.

(d)-(e) No change.

\* \* \* \* \*

#### 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

Nasdaq proposes to modify the annual fee charged to companies that list securities on the Nasdaq Capital Market ("Capital Market"), effective January 1, 2013. Currently, the annual fee for securities other than American Depositary Receipts ("ADRs") is \$27,500. Nasdaq proposes to increase this fee to \$32,000. This fee was last changed in 2007.

In addition, the annual fee charged for ADRs is currently tiered, based on the number of ADRs outstanding. Issuers with 10 million or fewer ADRs

outstanding pay an annual fee of \$17,500, while issuers with more than 10 million ADRs outstanding pay an annual fee of \$21,000. Nasdaq has determined that companies that list ADRs on the Capital Market should be charged the same fee as other companies. However, given that these companies currently pay lower annual fees than other companies, Nasdaq proposes to reduce the impact of this change by phasing in the increase over two years. Specifically, Nasdaq proposes that effective January 1, 2013, the annual fee for ADRs will be \$25,000 and effective January 1, 2014, the annual fee for ADRs will be \$32,000.

Companies currently listed on the Capital Market have already paid their 2012 annual fee. However, any company that lists prior to December 31, 2012 will owe a prorated annual fee based on the existing \$27,500 fee schedule or the existing tiered structure applicable to ADRs. The new fees will become effective on January 1, 2013, and companies will be billed their 2013 annual fee based on the new fee schedule shortly thereafter.<sup>3</sup>

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general and with Section 6(b)(4) of the Act,<sup>5</sup> in particular in that 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.<sup>6</sup>

Nasdaq believes that the proposed increase in the annual fee for companies listing on the Capital Market is reasonable because the revised fee will better reflect Nasdaq's costs related to companies listed on the Capital Market and the value that such a listing provides to the company. In that regard, Nasdaq notes that it has not increased the annual fees for listing on the Capital Market since January 1, 2007,<sup>7</sup> but has

<sup>3</sup> Until January 1, 2013, the online Nasdaq rule book will reflect the currently effective fees with a note indicating that this fee change is pending and will become effective on January 1, 2013. The online Nasdaq rule book will also contain a link to the text of the revised rule.

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> The Commission notes that Section 6(b)(5) of the Act contains the provision that states rules of an exchange "are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers." See 15 U.S.C. 78f(b)(5).

<sup>7</sup> Securities Exchange Act Release No. 55202 (January 30, 2007), 72 FR 6017 (February 8, 2007) (approving SR-NASDAQ-2006-040). The annual fees for ADRs have not been changed since 2005.

<sup>15</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.