

Act), as well as with Section 16(a) of the Act and, if and when applicable, Section 16(b) of the Act. Further, each Insurance Fund will act in accordance with the Commission's interpretations of the requirements of Section 16(a) with respect to periodic elections of directors/trustees and with whatever rules the Commission may promulgate thereto.

9. An Insurance Fund will make its shares available to the VLI Accounts, VA Accounts, and Plans at or about the time it accepts any capital from its investment adviser (or affiliates) or from a general account of a Participating Insurance Company.

10. Each Insurance Fund has notified, or will notify, all Participants that disclosure regarding potential risks of mixed and shared funding may be appropriate in VLI Account and VA Account prospectuses or Plan documents. Each Insurance Fund will disclose, in its prospectus that: (a) Shares of the Insurance Fund may be offered to both VA Accounts and VLI Accounts and, if applicable, to Plans, (b) due to differences in tax treatment and other considerations, the interests of various Variable Contract owners participating in the Insurance Fund and the interests of Plan participants investing in the Insurance Fund, if applicable, may conflict, and (c) the Insurance Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflicts.

11. If and to the extent Rule 6e-2 and Rule 6e-3(T) under the Act are amended, or Rule 6e-3 under the Act is adopted, to provide exemptive relief from any provision of the Act, or the rules thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then each Insurance Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 or 6e-3(T), as amended, or Rule 6e-3, to the extent such rules are applicable.

12. Each Participant, at least annually, shall submit to the Board of each Insurance Fund such reports, materials or data as the Board reasonably may request so that the directors/trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in this Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board of an Insurance Fund. The obligations of

the Participants to provide these reports, materials and data to the Board, when it so reasonably requests, shall be a contractual obligation of all Participants under their Participation Agreement with the Insurance Fund.

13. All reports of potential or existing conflicts received by the Board of each Insurance Fund, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

14. Each Insurance Fund will not accept a purchase order from a Plan if such purchase would make the Plan an owner of 10 percent or more of the net assets of the Insurance Fund unless the Plan executes an agreement with the Insurance Fund governing participation in the Insurance Fund that includes the conditions set forth herein to the extent applicable. A Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares.

15. Each Insurance Fund will make its shares available through an Account at or about the same time that the Insurance Fund receives any seed money from the general account of a Participating Insurance Company.

### Conclusion

For the reasons summarized above, applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Cathy H. Ahn,**  
*Deputy Secretary.*

[FR Doc. 2011-7695 Filed 3-31-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64137; File No. SR-Phlx-2011-37]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Complex Order Fees

March 28, 2011.

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 March 21, 2011, 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 its Complex Order<sup>3</sup> Fees in Section I of its Fee Schedule titled Rebates and Fees for Adding and Removing Liquidity in Select Symbols.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2011.

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.

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

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

<sup>3</sup> A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

*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 Section I, Part B of the Exchange's Fee Schedule, titled "Complex Order" to pay a Customer Complex Order Rebate for Adding Liquidity of \$0.25 per contract in certain symbols, specifically options overlying: (i) Standard and Poor's Depository Receipts/SPDRs ("SPY");<sup>4</sup> (ii) the PowerShares QQQ Trust ("QQQQ")®; and Apple, Inc. (AAPL), in order to attract additional Customer order flow in those symbols.

Currently, the Exchange pays a \$0.24 per contract Customer Complex Order Rebate for Adding Liquidity in all Select Symbols.<sup>5</sup> The Exchange is proposing to pay a \$0.25 per contract Rebate for Adding Liquidity for Customer Complex Orders in only the following symbols: SPY, QQQQ and AAPL. Other market participants would not be entitled to the Rebate for Adding Liquidity.<sup>6</sup> The Exchange would continue to pay Customers a rebate of \$0.24 per contract for transacting a Customer Complex Order in all other Select Symbols, except SPY, QQQ and AAPL which would receive the \$0.25 per contract rebate.

The Exchange does not propose to amend the fees in Section I, Part A titled "Single contra-side order."

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>8</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange also believes that there is an equitable allocation of reasonable rebates among Exchange members.

The Exchange believes that it is reasonable to only pay a Rebate for Adding Liquidity to Customers because this Customer rebate would attract Customer order flow to the Exchange for the benefit of all market participants.

The Exchange believes that the proposal is equitable because by paying a Rebate for Adding Liquidity to Customers, all market participants would benefit from the increased liquidity which increased Customer order flow would bring to the Exchange.

Further, the Exchange believes that it is reasonable to pay a different rebate for transacting equity options in certain symbols. NYSE Arca, Inc. ("NYSE Arca") pays an additional \$.05 per contract credit above the stated post liquidity credit for electronic transactions in options overlying SPY, C, BAC, QQQQ, AAPL, IWM, XLF, GLD, EEM, GE, UNG, FAZ, DIA, GDX, and USO which are referred to as the "premium tier."<sup>9</sup> The Exchange is proposing to pay different rebates for different symbols similar to the manner in which NYSE Arca pays an additional contract credit in certain symbols.

The Exchange believes that its proposal to pay a higher rebate for transactions in equity options in SPY, QQQQ and AAPL, as compared to the other Select Symbols, is equitable because the Exchange would uniformly pay the same rebates for all Customer Complex Orders in these three symbols.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the Complex Order fees and rebates it assesses must be competitive with fees and rebates assessed in place on other exchanges. The Exchange believes that this competitive marketplace impacts the fees and rebates present on the Exchange today and influences the proposals set forth above.

*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.<sup>10</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-37 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-2011-37. 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 Web site viewing and

<sup>4</sup> SPY options are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

<sup>5</sup> A list of all symbols subject to the Rebates and Fees for Adding and Removing Liquidity are listed in Section I of the Exchange's Fee Schedule and titled "Select Symbols."

<sup>6</sup> The only market participant that receives a Rebate for Adding Liquidity for Complex Orders today is a Customer.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> See NYSE Arca's Fee Schedule.

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

printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal 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-2011-37 and should be submitted on or before April 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-7730 Filed 3-31-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64133; File No. SR-NYSEAmex-2011-19]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 440B To Modify the Exchange's Procedures for Handling Short Sale Orders During a Period When the Short Sale Price Test Restrictions of Rule 201 of Regulation SHO Are in Effect

March 28, 2011.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder, <sup>3</sup> notice is hereby given that on March 25, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. 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 NYSE Amex Equities Rule 440B (Short Sales) to modify the Exchange's

procedures for handling short sale orders during a period when the short sale price test restrictions of Rule 201 of Regulation SHO ("Rule 201") <sup>4</sup> are in effect ("Short Sale Period"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

On February 26, 2010, the Commission adopted amendments to Rule 201 of Regulation SHO under the Act. <sup>5</sup> In order to implement the provisions of revised Rule 201, the Exchange amended NYSE Amex Equities Rule 440B (Short Sales) to (1) Establish procedures for the Exchange, as a listing market, to determine that the short sale price test restrictions of Rule 201 have been triggered for a covered security, (2) establish the protocols for the handling of short sale orders by the Exchange, as a trading center, in the event the short sale price test restrictions of Rule 201 are triggered, including establishing what types of short sale orders will be re-priced to achieve a "Permitted Price" (as defined and calculated in Rule 440B(e)), in accordance with Rule 201, during a Short Sale Period, (3) establish the Exchange's procedures regarding the execution and display of permissible orders during a Short Sale Period, and the execution and display of orders marked "short exempt" during such a period, (4) establish the Exchange's

procedures regarding the permissible execution price of short sale orders in single-priced opening, re-opening and closing transactions during a Short Sale Period, and (5) provide that, during a Short Sale Period, Exchange systems will not execute or display a short sale order with respect to that security at a price that is less than or equal to the current national best bid (except as otherwise provided in Rule 440B and consistent with Rule 201). <sup>6</sup>

Under Rule 440B(e), during a Short Sale Period, short sale orders that are limited to the national best bid or lower and short sale market orders will be re-priced by Exchange systems one minimum price increment above the current national best bid to permit their execution at a price that is compliant with the short sale price test restrictions of Rule 201. Consistent with Rule 201, <sup>7</sup> the Permitted Price for securities for which the national best bid is \$1 or more is \$.01 above the national best bid; the Permitted Price for securities for which the national best bid is below \$1 is \$.0001 above the national best bid. <sup>8</sup>

Among other things, Rule 440B(f) implements Rule 201(b)(1)(iii)(A), which provides that a trading center must have policies and procedures reasonably designed to permit the execution of a displayed short sale order of a covered security if, at the time of the initial display of the short sale order, the order was at a price above the current national best bid. Rule 440B(f) specifically provides that the Exchange will execute and display a short sale order without regard to price if, at the time of the initial display of the short sale order, the order was at a price above the then current national best bid.

The Exchange proposes to amend Rule 440B(e) to provide for how Exchange systems will treat short sale orders that are not marked "short exempt" during a Short Sale Period, i.e., displayed short sale orders pursuant to Rule 440B(f) or non-marketable displayable or non-displayed short sale orders that Exchange systems have not yet re-priced pursuant to Rule 440B(e), and that would be required to be routed to a protected bid pursuant to Regulation NMS, which, by definition, would be the national best bid or lower. An example of a situation where Exchange systems would otherwise be required to route to the national best bid includes the following: (1) A short sale order is displayed pursuant to Rule

<sup>4</sup> 17 CFR 242.201.

<sup>5</sup> See Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) (File No. S7-08-09; Amendments to Regulation SHO) ("Rule 201 Adopting Release"). In the Rule 201 Adopting Release, the Commission also adopted amendments to Rule 200(g) of Regulation SHO to include a "short exempt" marking requirement. 17 CFR 242.200(g).

<sup>6</sup> See Securities Exchange Act Release No. 63974 (February 25, 2011), 76 FR 12198 (March 4, 2011) (SR-NYSEAmex-2011-08).

<sup>7</sup> See Rule 201 Adopting Release at 11247.

<sup>8</sup> 17 CFR 242.612.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.